

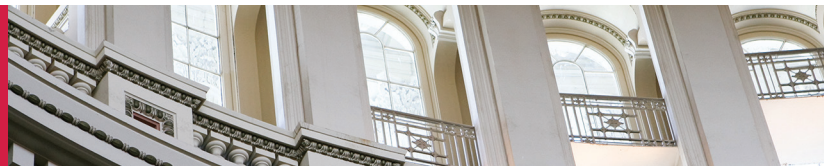


**Internal Revenue Service Advisory Council**

# **PUBLIC REPORT**



**November 2024**



**INTERNAL REVENUE SERVICE ADVISORY COUNCIL**

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**See Appendix D for Member Biographies.**

\*Service through May 2024.



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**GENERAL REPORT  
OF THE  
INTERNAL REVENUE SERVICE ADVISORY COUNCIL**

**Introduction**

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The Internal Revenue Service Advisory Council (IRSAC), the successor to the Commissioner’s Advisory Group established in 1953, serves as an advisory body to the Commissioner of Internal Revenue (Commissioner). The IRSAC’s purpose is to provide an organized public forum for Internal Revenue Service (IRS) officials and representatives of the public to discuss tax administration issues. The IRSAC reviews existing tax policy and administrative issues and makes recommendations to achieve efficient and effective tax administration. As part of its duties, the IRSAC conveys the public’s perception of professional standards and best practices for tax professionals and IRS activities, offers constructive observations regarding current or proposed IRS policies, programs, initiatives, and procedures, and advises the Commissioner and senior IRS executives on substantive tax administration matters.

In 2024, the IRSAC comprised 32 members representing a broad cross-section of the taxpaying public and many years of experience in the areas of providing tax substantive advice and tax preparation for individuals, small businesses, large, multi-national corporations, and tax exempt entities; representation in examination, appeals and collection matters; information reporting; payroll matters; volunteer community tax programs; electronic tax administration and digital services; professional standards for tax professionals; research; and teaching. Each member offers unique experiences in tax compliance and planning, advocacy, and work to promote understanding and improvement of our tax system. Members volunteer to join the IRSAC to learn more from the IRS and IRSAC colleagues, and offer their time, expertise and perspective in offering actionable and informed recommendations to the IRS.

The IRSAC is organized into five subgroups:

1. Information Reporting (IR).



2. Large Business & International (LB&I).
3. Small Business/Self Employed (SB/SE).
4. Tax Exempt/Government Entities (TE/GE).
5. Taxpayer Services (TS) (formerly Wage & Investment).

The Information Reporting Program Advisory Committee (IRPAC) and Advisory Committee on Tax Exempt and Government Entities (ACT) were consolidated into the IRSAC in 2019. The Information Reporting subgroup was established to ensure that members have an effective forum to raise and discuss information reporting and payroll issues and recommendations. A new subgroup will be added starting in 2025 to focus on fairness in tax administration.<sup>1</sup>

The IRSAC completes its work through four two-day working sessions, three public meetings, and numerous virtual meetings with IRS experts and subgroup working sessions throughout the year. The IRSAC worked on issues identified by the IRS as well as ones identified by members to produce this annual report with background on 37 issues gained from IRS subject matter experts and member research and experiences, to provide actionable and informed recommendations for the IRS.

The 37 issues with background and recommendations included in this report include 13 “general” issues. Reports in the general category involve matters that are either beyond the topics covered within any of the five subgroups (such as IRS funding) or pertain to areas that involve the scope of more than one IRSAC subgroup. The remaining 24 issues are within the five subgroups listed earlier.

The 2024 Report reflects a few themes including the need for digital tools and taxpayer-IRS interactions to be more fully digital with technical support and features and accessibility to produce efficiencies for taxpayers and the IRS. Another theme is the need for greater availability and timeliness of communications such as to acknowledge receipt of information from taxpayers and timely transcript information. Three of the general reports involve changes in PTIN oversight for the IRS and PTIN holders and suggested changes to Circular 230

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<sup>1</sup> 89 FR 29433 (April 22, 2024); <https://www.govinfo.gov/content/pkg/FR-2024-04-22/pdf/2024-08510.pdf>.

including for improved oversight of return preparers. Several reports offer recommendations for greater transparency and support to taxpayers including to effectively obtain public comment on new and revised tax forms.

In 2024, the IRSAC submitted seven comment letters to the IRS. The first letter was submitted in May 2024 to follow the process established many years ago by the Department of the Treasury and the IRS via the Priority Guidance Plan (PGP) to solicit suggestions from the public for the guidance plan for the upcoming year. Our PGP letter identified open recommendations from the 2023, 2022 and 2021 IRSAC reports that call for binding guidance. Later comment letters respond to IRS requests for comments on draft forms and technical notices for which the IRSAC had a high level of interest and expertise. Generally, the recommendations in these comment letters were due to the IRS before the November report and were submitted as letters per the IRS official requests for public comment on draft forms and notices. These letters are reproduced in Appendix A of this report.

## **Recognition**

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The IRSAC recognizes and thanks the IRS Office of National Public Liaison (NPL) for its exceptional assistance, dedication, and timely and expert support throughout the year. The IRSAC appreciates the work, presentations and assistance of the many divisions, groups and individuals who met with IRSAC members and provided needed information. These groups include the Business Operating Division (BOD) leaders and staff, Transformation Strategy Office, IRS Communications and Liaison, Office of Professional Responsibility, Return Preparer Office, Human Capital Office, Chief Counsel, and the National Taxpayer Advocate. We thank everyone who provided information needed for the IRSAC's work for their engagement and support. The IRSAC recognizes the ongoing support from the Commissioner and the IRS workforce for its tireless efforts serving America's taxpayers.

The IRSAC benefits from the deep knowledge that NPL personnel assigned to serve the IRSAC have about the IRS and its operations. We appreciate their

commitment to serving the IRSAC with their expertise, professionalism, and patience to arrange meetings and serve information needs of the IRSAC in performing its work. Special thanks to the following individuals for their outstanding service to the IRSAC and its members:

Anna Millikan, NPL, IRSAC Co-Program Manager

Stephanie Burch, NPL, IRSAC Co-Program Manager

John Lipold, NPL, IRSAC Designated Federal Officer

Mel Hardy, Director, Office of National Public Liaison

The IRSAC thanks the IRS liaisons to each of the subgroups for arranging meetings with subject matter experts, helping track the flow of agenda and report information, and helping each subgroup stay current with timeline due dates:

Tanya Barbosa, NPL, Liaison to the Information Reporting Subgroup

Stephanie Burch, NPL, IRSAC Co-Program Manager and Liaison to the LB&I Subgroup

Tanya Taylor, NPL, Liaison to the SB/SE Subgroup

Brian Ward, NPL, Liaison to the TE/GE Subgroup

Maria Salazar, NPL, Liaison to the Taxpayer Services Subgroup

## **IRSAC Activities in Addition to Recommendations in This Report**

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In addition to this November report, throughout the year, the IRS asked the IRSAC to provide comments at virtual meetings and via email on various projects, initiatives, notice revisions and forms. Generally, the IRSAC's comments were needed before the release of the November report. The Government Accountability Office (GAO), as it has done in the past, also asked the IRSAC to provide information on some reports they have in progress. IRSAC members appreciate the opportunity these requests provide to learn of various activities that can inform all of our work and to share their expertise in tax practice and the tax law as well as understanding of taxpayer needs, to help the IRS improve various tax administrative activities.

Notable work of the IRSAC in 2024 beyond recommendations and comment letters in this report follow.

- Provided input to the SB/SE Division on how to increase the number of taxpayers who apply for the Employee Retention Credit (ERC) Voluntary Disclosure Program that was announced in December 2023.<sup>2</sup>
- Provided suggestions to the Stakeholder Partnerships, Education and Communication (SPEC) office on how to help taxpayers understand and claim appropriate credits and deductions. This was a public request of the IRS via a Request for Information (RFI) released in November 2023.
- Offered comments to the Taxpayer Experience Office on how to improve filing and awareness of Forms 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, and 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner.
- Provided ideas to the SB/SE Division on its work to create a PIN system required starting in 2025 for certain items eligible for the Section 25C, Energy Efficient Home Improvement Credit.

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<sup>2</sup> IR-2023-247 (Dec. 21, 2023); <https://www.irs.gov/newsroom/irs-new-voluntary-disclosure-program-lets-employers-who-received-questionable-employee-retention-credits-pay-them-back-at-discounted-rate-interested-taxpayers-must-apply-by-march-22>.

- Provided practice insights on backup withholding issues with respect to broker reporting of digital asset transactions under Section 6045, observations on Form 1099-DA reporting (in addition to two comment letters on this form and its instructions), reporting issues for widely held fixed investment trusts (WHFITs), and broker reporting of Section 1256 contracts.
- Provided comments to the SB/SE Division on a draft update of Letter 725-B regarding notice of appointment with a revenue officer, and a revision to Notice CP14C about additional time to pay your taxes due to a disaster.
- Provided comments on the Modified Business Entity Transcript.
- Provided suggestions to improve new Form 15397, Application for Extension of Time to Furnish Recipient Statements (May 2024), that led to converting question 5 from a list of options to an open-ended question on why an extension is needed (see August 2024 version of Form 15397).
- Provided information to Taxpayer Services to improve the ITIN process including use of plain language in instructions and clarification of certain required documentation.
- Provided information to the GAO at their request, on taxpayer verification and authentication issues; the meaning of and ideas for improving the taxpayer experience; and IRS use of artificial intelligence (AI).

## **Progress on Recommendations in the IRSAC's 2023 Report**

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As a follow up to the IRSAC's 2023 report, the IRSAC is pleased to report that as of September 2024, the IRS had implemented, partially or fully, the following actions in accordance with the IRSAC's 2023 recommendations:

- Issued guidance on legislative changes to Section 174 on R&D expenditures.
- Updated instructions regarding documentation required on an amended Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return.
- Will evaluate the video conferencing option and preparer educational approaches regarding preparer due diligence audits under Section 6695(g). Also created a tax professional awareness week, held a webinar on Due Diligence for Paid Tax Return Preparers, and expanded social media postings to further understanding of what is required to meet the Section 6695(g) requirements.
- Made improvements to Field Collection with a Day-to-Day Voicemail Script, including information on how to contact the Revenue Officer's manager. A customer service module is included in education for Revenue Officer new-hire training.
- The TE/GE Division will continue its non-bank trustee (NBT) program and continue to monitor and evaluate the cost/benefit of accepting new NBT applicants.
- The TE/GE Division posted additional resources, such as a data dictionary, at the Tax-Exempt Organization Search (TEOS) website.
- The Taxpayer Services Division made changes to enable filing returns using self-service products, including use of an IP-PIN to mitigate fraud.
- The Document Upload Tool (DUT) was updated to provide the filer with a receipt, provide instructions on what document types can be uploaded, and to have notices list the DUT as the first option to provide documents with a QR code to aid the process.

- IRS phone assistors can use IRS systems to determine if the caller has an open notice to better assist the caller or refer them to someone else who can assist them.

## Mapping of IRSAC Recommendations to the IRS Strategic Operating Plan (SOP) Objectives and Initiatives

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In April 2023, the IRS released its Strategic Operating Plan (SOP)<sup>3</sup> describing within five objectives and 42 initiatives how it would use the additional long-term funding provided by the Inflation Reduction Act of 2022 (P.L. 117-169, Aug. 16, 2022).<sup>4</sup> In May 2024, the IRS released an update on its progress on the plan.<sup>5</sup>

The five broad objectives that frame the initiatives of the SOP are:

1. *Taxpayer Services*: Dramatically improve services to help taxpayers meet their obligations and receive the tax incentives for which they are eligible.
2. *Resolving Taxpayer Issues*: Quickly resolve taxpayer issues when they arise.
3. *Expanded Enforcement*: Focus expanded enforcement on taxpayers with complex tax filings and high-dollar noncompliance to address the tax gap.
4. *Cutting-Edge Technology*: Deliver cutting-edge technology, data and analytics to operate more effectively.
5. *Workforce*: Attract, retain and empower a highly skilled, diverse workforce and develop a culture that is better equipped to deliver results for taxpayers.

Given the significance of the SOP to the IRS's work in the above five areas, starting with the IRSAC's 2023 work and report, information from the SOP was considered in background and recommendations made, with the recommendations mapped to the SOP initiatives to make them more useful to the

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<sup>3</sup> See news release IR-2023-72 (April 6, 2023); <https://www.irs.gov/newsroom/irs-unveils-strategic-operating-plan-ambitious-effort-details-a-decade-of-change>; and IRS Strategic Operating Plan FY 2023-2031 (Pub. 3744) at <https://www.irs.gov/about-irs/irs-inflation-reduction-act-strategic-operating-plan>.

<sup>4</sup> The Inflation Reduction Act of 2022 (P.L. 117-169, Aug. 16, 2022), SEC. 10301 specifies the categories the \$80 billion is allocated to such as taxpayer services, enforcement and business system modernization. Later public laws reduced the enforcement funding by about \$21 billion.

<sup>5</sup> IRS 2024 IRA Strategic Operating Plan Annual Update Supplement, Pub. 3744a; <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>.



IRS. The IRSAC continues this mapping for this 2024 report and prepared a general issue report offering recommendations specific to assessment and analysis of the SOP (General Report 2).

Each of the 37 issues addressed in this report indicate at the start which initiative(s) the issue ties to. Appendix B of this report not only lists all the 2024 recommendations but also the relevant SOP initiative(s) for each. Appendix C of this report lists the IRSAC’s recommendations from 2019 through 2023 that are still open at September 2024 along with the SOP initiative each ties to.

The table below summarizes how the 37 issues in the 2024 report tie to the five SOP objectives.

IRSAC Subgroup:	IRSAC Recommendation Mappings to the IRS SOP Objectives						
	General	IR	LB&I	SB/SE	TE/GE	TS	Total
Objective 1 – Taxpayer Services	7	7	2	1	2	4	23
Objective 2 – Resolving Taxpayer Issues	2	1	2	2	1		8
Objective 3 – Expanded Enforcement	2						2
Objective 4 – Cutting-edge Technology	8	1	1		2		12
Objective 5 - Workforce	3						3
No Objective	4				1		5
Totals *	26	9	5	3	6	4	53

\*Totals exceed the number of issues in the 2024 IRSAC report because some topics/issues map to more than one objective.

## **ISSUE ONE: IRS Funding**

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**SOP Mapping:** All SOP initiatives.

### **Executive Summary**

The IRS plays a crucial role in the financial foundation of the United States, by collecting nearly every dollar of revenue that funds federal operations. A tax system that functions well is crucial to our nation's economy and national security.

The "tax gap" represents the disparity between the true tax liability owed by all taxpayers collectively and the actual amount collected on time. This difference presents a burden to all American taxpayers and future generations. When noncompliant taxpayers pay less than the true tax they owe, their burden shifts to the compliant majority, resulting in budget deficits, mounting federal debt, and higher debt service costs now and for the future generations who will ultimately repay this debt. In addition to the financial shift, the public perception that the tax burden is not borne by all erodes confidence in the fairness of our tax system and of our nation's tax administration.

Though the public has some understanding that not all taxpayers are compliant, the public remains largely uninformed about the origins and size of the tax gap and the ways in which IRS enforcement and taxpayer services activities reduce it. It can be difficult for many Americans to understand the tax gap or to see how it impacts them, making it important that the IRS take steps to communicate with the public about the new measures it is undertaking to reduce the tax gap and how compliant taxpayers will benefit from those actions.

### **Background**

The IRS collects 96% of all federal revenue.<sup>6</sup> The United States has a voluntary tax system, a term that refers to taxpayers self-reporting their items of income, deduction, credits, and tax on an annual basis. Through its National Research Project (NRP) that measures compliance, the IRS estimates that 85% of taxes owed are paid voluntarily and timely, meaning that taxpayers file correct

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<sup>6</sup> IRS, *Return on Investment: Re-Examining Revenue Estimates for IRS Funding*, Feb. 2024, Pub. 5901; <https://www.irs.gov/pub/irs-pdf/p5901.pdf>.

returns and pay their taxes by the due date. The voluntary compliance rate has remained consistent over the past two decades, though both revenues collected and the tax gap have increased during the same period as a result of economic expansion.<sup>7</sup>

The gross tax gap represents the difference between taxes owed and taxes paid voluntarily and timely; the net tax gap refers to the balance that remains uncollected after accounting for enforcement activities and late payments. For tax year 2021, the tax gap was an estimated \$688 billion, and the IRS estimates that \$63 billion of that amount will eventually be collected, leaving a net tax gap of \$625 billion for the year.<sup>8</sup>

Taxpayers who have a filing requirement but fail to file their tax returns make up one component of the tax gap. Those taxpayers who file but do not pay the balance owed are another source of shortfall. The largest contributors to the tax gap are those who underreport income and/or claim improper deductions and therefore, do not pay over the correct taxes. The IRS's compliance research estimates underreporting of income accounted for \$480 billion of the gross tax gap in tax year 2020 and \$542 billion in 2021, as summarized by the IRS in the following table and the diagram at the end of this report.<sup>9</sup>

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<sup>7</sup> Congressional Research Service, *Federal Tax Gap: Size, Contributing Factors, and the Debate over Reducing It* (IF11887), Oct. 30, 2023; <https://crsreports.congress.gov/product/pdf/IF/IF11887>.

<sup>8</sup> IRS, *Federal Tax Compliance Research: Tax Gap Projections for Tax Years 2020 & 2021*, Pub. 5869 (Oct. 2023); <https://www.irs.gov/pub/irs-pdf/p5869.pdf>. Table 1 in the text is from IRS Pub. 5869, p. 10; the table at the end of this funding report is from p. 8 of Pub. 5869. Subsequent to the drafting of this issue paper on IRS funding, the IRS released the tax gap figures for tax year 2022 which it estimates at \$696 billion for the gross tax gap and \$606 billion for the net tax gap. See IR-2024-262 (Oct. 10, 2024); <https://www.irs.gov/newsroom/irs-releases-2022-tax-gap-projections-voluntary-compliance-rate-among-taxpayers-remains-steady>. This news release also updates the tax gap estimate for 2021. Data references in this IRSAC report for General Issue One use the data for tax year 2021 as originally released as the focus for this report is that a large tax gap exists and the issues it creates and encourages the IRS to promote better understanding of the tax gap and its relevance to all taxpayers.

<sup>9</sup> *Ibid.*

**Table 1. Tax Gap Estimates for Tax Years 2014–2016 and Projections for Tax Years 2017–2019, 2020 and 2021**  
 [Money amounts are in billions of dollars]

Tax Gap Component	TY 2014–2016 [2]	Projections[1]			
		TY 2017–2019 [2]	TY 2017–2019 [2] Revised	TY 2020	TY 2021
<b>Estimated Total True Tax</b>	\$3,307	\$3,621	\$3,645	\$3,902	\$4,565
<b>Gross Tax Gap</b>	\$496	\$540	\$550	\$601	\$688
Nonfiling Tax Gap	\$39	\$41	\$41	\$52	\$77
Underreporting Gap	\$398	\$433	\$445	\$480	\$542
Underpayment Gap	\$59	\$66	\$64	\$69	\$68
<b>Voluntary Compliance Rate</b>	85.0%	85.1%	84.9%	84.6%	84.9%
<b>Enforced and Other Late Payments</b>	\$68	\$70	\$70	\$63	\$63
<b>Net Tax Gap [3]</b>	\$428	\$470	\$481	\$539	\$625
<b>Net Compliance Rate</b>	87.0%	87.0%	86.8%	86.2%	86.3%

[1] These figures will be updated as more complete compliance data become available.

[2] The estimates and projections are the annual averages for the covered timeframe.

[3] The net tax gap is the gross tax gap reduced by the amount of enforced and other late payments that will eventually be paid.

Detail may not add to total due to rounding.

The noncompliant taxpayers responsible for the tax gap are not distributed equally throughout the spectrum of taxpayers. There is a growing recognition that a significant portion of the tax gap is associated with higher income taxpayers.<sup>10</sup>

There are several factors that lead to this disparity, not least of which is the nature of income for various economic groups. Tax compliance is significantly higher where information reporting is done by third parties, and compliance rises even further where taxes are withheld at the source. Middle- and lower-income taxpayers are more likely to have income subject to information reporting and tax withholding, such as wages reported on Form W-2 where income taxes are also withheld. This visibility of income reduces errors by taxpayers in reporting their income, while also allowing the IRS to use computerized data matching to verify that taxpayers report correctly.

By contrast, taxpayers in the highest income brackets often have income that is subject to little or no third-party reporting, and many of the highest-income taxpayers have multiple income streams from complex business structures, offshore accounts, and sophisticated tax avoidance strategies. These types of returns are time-consuming to audit and require auditors with specialized training, as well as counsel to litigate disputes in court. Although the IRS is aware that much

<sup>10</sup> Natasha Sarin, Deputy Assistant Secretary for Economic Policy, U.S. Dept. of the Treasury, “The Case for a Robust Attack on the Tax Gap,” Sept. 7, 2021; <https://home.treasury.gov/news/featured-stories/the-case-for-a-robust-attack-on-the-tax-gap>. This news release notes: “the tax gap is more concentrated toward the top of the income distribution” and offers reasons for this.

of the tax gap is attributable to high-income taxpayers, audits of this group of taxpayers have declined in recent years, as the agency lacked the resources to conduct them.<sup>11</sup>

While there has been a decline in audits overall, the decline in audits of taxpayers with incomes exceeding \$500,000 has been greater than the decline in audits of taxpayers at other income levels.<sup>12</sup> The effect of declining audit rates for high-income taxpayers resulted in lower- and middle-class taxpayers being subject to more enforcement activity than their wealthier counterparts, simply because the IRS lacked the resources to audit complex returns. Although the IRS does not collect information concerning race and gender, it has taken note of the uneven enforcement activities and has been examining its audit selection process to identify systemic bias across demographic factors that include age, race, ethnicity, geographic location, and gender.<sup>13</sup>

The Inflation Reduction Act of 2022<sup>14</sup> provided an \$80 billion infusion of cash to modernize the IRS and improve the agency’s functional capabilities in both providing services to taxpayers, as well as conducting enforcement activities to

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<sup>11</sup> IRS Commissioner Werfel, Written Testimony of Daniel Werfel, Commissioner, Internal Revenue Service, before the Senate Finance Committee on the Filing Season and the IRS Budget, April 16, 2024; [https://www.finance.senate.gov/imo/media/doc/0416\\_werfel\\_testimony.pdf](https://www.finance.senate.gov/imo/media/doc/0416_werfel_testimony.pdf). Commissioner Werfel notes: “IRA funding has also enabled us to begin making critical inroads in addressing the tax gap and tax evasion among the most complex and largest filers, which represents a sharp turnaround from the past decade when our work was hindered by lack of resources. Our compliance work includes focusing on delinquency and non-filing among high-income individuals, as well as leveraging artificial intelligence (AI) and hiring subject matter experts to find tax evasion among our largest and most complex partnerships and corporations.”

<sup>12</sup> Council of Economic Advisers (CEA), *Empowering the IRS: Understanding the Full Potential of the Inflation Reduction Act's Historic Investment in the Internal Revenue Service*, Feb. 8, 2024; <https://www.whitehouse.gov/cea/written-materials/2024/02/08/empowering-the-irs-understanding-the-full-potential-of-the-inflation-reduction-acts-historic-investment-in-the-internal-revenue-service/>.

<sup>13</sup> U.S. Government Accountability Office, *Tax Enforcement: IRS Audit Selection Process for Returns Claiming Refundable Credits Could Better Address Equity*, GAO-24-106126, May 21, 2024; <https://www.gao.gov/products/gao-24-106126>. In the May 2024 supplement to its SOP, the IRS highlights ensuring fairness in enforcement, noting that 2024 priorities included investing resources into research to help the agency “identify any disparities across dimensions of race, ethnicity, age, gender and geography” and deploying “two pilot models which aim to both improve audit outcomes and reduce racial disparity. See IRS, 2024 IRA Strategic Operating Plan Annual Update Supplement, Pub. 3744a, pp. 20 to 21; <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>.

<sup>14</sup> P.L. 117-169 (Aug. 16, 2022).

identify and collect from those who are not fully compliant. Both taxpayer services and enforcement activities help reduce the tax gap.

Nineteen months after providing the \$80 billion funding to modernize the IRS, Congress rescinded \$20.2 billion of that funding as part of the Further Consolidated Appropriations Act of 2024 (P.L. 118-47). In addition, the Fiscal Responsibility Act of 2023 (P.L. 118-5; June 5, 2023) reduced the \$80 billion of funding by about \$1.4 billion. These rescissions were specifically from the IRS enforcement functions.

In addition to rescinding IRA funding, Congress continued its practice in FY 2024 of denying the IRS an inflation adjustment to its base budget, funding the agency at the same dollar amount it had received for 2023. The effect of maintaining 2023 funding reduces the agency's spending power as inflation erodes the value of the agency's funding.

IRS enforcement activities more than pay for themselves. The Congressional Budget Office (CBO) estimates that each \$1 of additional funding for IRS enforcement activities results in \$5 to \$9 of increased revenues.<sup>15</sup> The Council of Economic Advisers (CEA) estimates that \$1 of additional funding spent auditing taxpayers with incomes above the 90<sup>th</sup> percentile will yield more than \$12 in revenue to our nation's treasury.<sup>16</sup> The Congressional Budget Office scored the \$20 billion rescission of IRS funding in P.L. 118-47 as costing the federal treasury \$44 billion, increasing the deficit by \$24 billion.<sup>17</sup>

In addition to collecting the tax owed to our federal treasury, enforcement of tax laws provides the compliant public with confidence that our system of tax administration is fair. Although it is difficult to quantify, studies suggest enforcement activity also creates a deterrent effect against future noncompliance, with audits encouraging better compliance in subsequent tax years.<sup>18</sup> On the other

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<sup>15</sup> Congressional Budget Office, *The Effects of Increased Funding for the IRS*, Sept. 2, 2021; <https://www.cbo.gov/publication/57444>.

<sup>16</sup> CEA, *supra*.

<sup>17</sup> Congressional Budget Office, *How Changes in Funding for the IRS Affect Revenues*, Feb. 2024; <https://www.cbo.gov/publication/60037>.

<sup>18</sup> William C. Boning, Nathaniel Hendren, Ben Sprung-Keyser, and Ellen Stuart, "A Welfare Analysis of Tax Audits Across the Income Distribution," National Bureau of Economic Research (NBER) working paper, June 2023; <https://www.nber.org/papers/w31376>. The authors focused on "specific

hand, public perception that noncompliance has no consequences may result in lower rates of compliance and undermine the public's faith in the fairness of our nation's tax system.

The IRS has made important and well-documented strides in updating its technology, hiring new workers, and improving services to all taxpayers. Even with the improved service and updated technology, however, some taxpayers will remain noncompliant or not fully compliant. Enforcement of our nation's tax laws is an important duty, and by performing that function the IRS defends the integrity of our tax system and acts in the interests of the compliant majority of taxpayers. Greater awareness of the tax gap should help the public better understand and appreciate the importance of sufficient funding for IRS enforcement activities, taxpayer services and modernization.

### **Recommendations**

1. Find opportunities to educate the public about the scope of the tax gap and the manner in which enforcement and taxpayer service activities improve our nation's financial health and support fairness in tax administration. Such distribution opportunities exist in social media postings, information included in form instructions and publications, fact sheets, and other avenues. Use common language and emphasize that the tax gap refers to "taxes owed" and that the unpaid taxes are owed to our nation collectively ("our tax gap") to help convey to the public that the tax gap is relevant to them and a topic about which they should care deeply. Along with conveying the size of the tax gap and the importance of the issue, also actively seek opportunities to communicate that the additional funding provided by the Inflation Reduction Act of 2022 is more than paying for itself by helping the IRS collect more unpaid tax owed the treasury than the agency is receiving in funding. The IRS should also be transparent in noting that compliance

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deterrence" where an audit of an individual can improve future compliance by that individual. They did not quantify general deterrence where an audit of one individual may change behavior of others, and they note that their overall estimate of the deterrence effect of audits may thus be a "lower bound" (see footnote 44 and page 28 of their report).

audits of large and complex returns can take years to conduct, and that the payoff from these activities may not be fully realized for a number of years due to lengthy audits possibly followed by appeals and litigation.

2. Explain to the public that the IRS budget for enforcement and taxpayer services includes many activities beyond audits and forced collection. The enforcement budget also includes everything from reminding taxpayers to file their returns or pay their balance due, setting up payment plans with taxpayers who cannot pay their balance due when they file their tax return, and protecting the federal treasury from fraudulent refund claims using stolen identities. While the enforcement budget is a large component of IRS funding overall, many of the activities funded under that budget line item are not what the public thinks of when they hear the term “enforcement.”
3. Develop a single webpage to help the public understand the tax gap, and use charts, graphs, and other visual aids to help readers understand the tax gap and IRS efforts to reduce it. At present, the IRS has two different pages addressing the topic, a statistics page with data that includes the most recent tax gap data that is available, and a newsroom page that contains no information after the 2014-2016 tax gap estimate.<sup>19</sup>

A single, well-maintained web page devoted to the tax gap that uses charts, graphs, and illustrations to present the information in a visually interesting manner would help to engage the public. Also, efforts to help readers understand the scale of the tax gap could be helpful; for example, the 2021 tax gap of \$688 billion exceeded all corporate income tax collections in 2022, which totaled \$425 billion.<sup>20</sup>

By taking the lead as a reliable source of tax gap data that is presented in a format accessible to the public, the IRS can become the trusted source for information about the tax gap and perhaps dispel some of the misleading information disseminated by the agency’s detractors.

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<sup>19</sup> See <https://www.irs.gov/statistics/irs-the-tax-gap> and <https://www.irs.gov/newsroom/the-tax-gap> (as viewed Oct. 11, 2024).

<sup>20</sup> Joint Committee on Taxation, *Overview of the Federal Tax System As In Effect for 2024*, JCX-26.24, May 23, 2024, p. 29; <https://www.jct.gov/publications/2024/jcx-26-24/>.



Highlighting significant successes in closing the tax gap and pairing those successes with funding made available by the IRA would bolster the public's support for IRS funding initiatives in the future.

4. Develop a calculation methodology for corporate income tax nonfilers, estate/trust nonfilers, and tax-exempt nonfiling of unrelated business tax and include these data in the estimation of the tax gap. While the IRS includes income tax for individuals and corporations, employment taxes, and estate tax in its estimation of the tax gap, it has not included corporate income tax nonfilers, nonfilers of income tax returns for estates and trusts (Form 1041), and income tax owed by tax-exempt entities in its estimates. The omission of these nonfilers from estimates of the tax gap may create an impression that corporations, estates, trusts and tax-exempt entities contribute nothing to the nonfiler tax gap when it is impossible to know that in the absence of data. Including those nonfilers in tax gap estimates would provide a more accurate estimate of the tax gap and would also assure taxpayers that the IRS fairly seeks to enforce the tax law for all types of taxpayers.

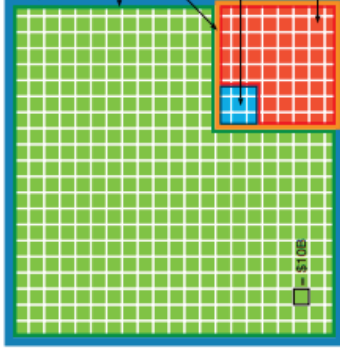
Figure 1. TY2021 Projected Tax Gap Map

# Tax Gap Projections for Tax Year 2021

(Money amounts are in billions of dollars. These figures will be updated as more complete compliance data become available.)



Research, Applied Analytics & Statistics



**Estimated Total True Tax Liability\***

**\$4,565B**

Tax Paid Voluntarily & Timely

**\$3,877B** 84.9% Voluntary Compliance Rate (VCR)

Gross Tax Gap

**\$688B**

Enforced & Other Late Payments

**\$63B**

Net Tax Gap (Tax Not Collected)

**\$625B** 86.3% Net Compliance Rate (NCR)

**Calculating the Net Tax Gap**

$$\begin{aligned} &\text{Nonfiling} \\ &\text{Underreporting} \\ &+ \text{Underpayment} \\ &\text{Gross Tax Gap} \\ &- \text{Enforced \& Other Late Payments} \\ &= \text{Net Tax Gap} \end{aligned}$$

Total True Tax Liability		Tax Paid Voluntarily & Timely		Gross Tax Gap		Enforced & Other Late Payments		Net Tax Gap (Tax Not Collected)	
By Type of Tax	Individual Income Tax	Individual Income Tax	Individual Income Tax	Individual Income Tax	Individual Income Tax	Individual Income Tax	Individual Income Tax	Individual Income Tax	Individual Income Tax
Total True Tax Liability	\$4,565	\$3,877	\$77	\$67	\$688	\$63	\$625		
Individual Income Tax	\$2,721	\$2,201	\$67	\$67	\$520	\$45	\$475		
Corporation Income Tax	\$304	\$259	\$40	\$40	\$45	\$8	\$37		
Employment Tax	\$1,455	\$1,337	\$9	\$9	\$118	\$6	\$112		
Estate Tax	\$21	\$17	\$2	\$2	\$4	\$3	\$1		
<b>By Type of Tax</b>									
Individual Income Tax	\$67	\$67	\$67	\$67	\$57	\$45	\$45		
Corporation Income Tax	\$40	\$40	\$40	\$40	\$5	\$8	\$3		
Employment Tax	\$9	\$9	\$9	\$9	\$4	\$6	\$2		
Estate Tax	\$2	\$2	\$2	\$2	\$2	\$3	\$1		
Nonfiling	\$77	\$77	\$77	\$77	\$68	\$63	\$63		
Underreporting	\$542	\$542	\$542	\$542	\$542	\$542	\$542		
Underpayment	\$688	\$688	\$688	\$688	\$688	\$688	\$688		
Individual Income Tax	\$396	\$396	\$396	\$396	\$396	\$396	\$396		
Corporation Income Tax	\$40	\$40	\$40	\$40	\$40	\$40	\$40		
Employment Tax	\$9	\$9	\$9	\$9	\$4	\$6	\$2		
Estate Tax	\$2	\$2	\$2	\$2	\$2	\$3	\$1		
Income Offsets [1]	\$26	\$26	\$26	\$26	\$26	\$26	\$26		
Credits	\$51	\$51	\$51	\$51	\$51	\$51	\$51		
Non-Business Income	\$110	\$110	\$110	\$110	\$110	\$110	\$110		
Business Income	\$182	\$182	\$182	\$182	\$182	\$182	\$182		
Large Corporations	\$19	\$19	\$19	\$19	\$19	\$19	\$19		
Small Corporations	\$21	\$21	\$21	\$21	\$21	\$21	\$21		
Filing Status	\$8	\$8	\$8	\$8	\$8	\$8	\$8		
Other Taxes	\$5	\$5	\$5	\$5	\$5	\$5	\$5		
Marginal Effects [3]	\$15	\$15	\$15	\$15	\$15	\$15	\$15		
Unallocated	\$1	\$1	\$1	\$1	\$1	\$1	\$1		
FICA & Uncollected FICA Tax	\$68	\$68	\$68	\$68	\$68	\$68	\$68		
FICA & FUTA	\$36	\$36	\$36	\$36	\$36	\$36	\$36		
Employment Tax	\$9	\$9	\$9	\$9	\$4	\$6	\$2		
Estate Tax	\$2	\$2	\$2	\$2	\$2	\$3	\$1		

**NOTES:**

- \* Totals include Excise Tax.
- #—No estimate.
- Detail may not add to totals due to rounding.
- [1] Includes adjustments, deductions, and exemptions.
- [2] Includes the Alternative Minimum Tax and taxes reported in the "Other Taxes" section of the Form 1040 except for self-employment tax and unreported Social Security and Medicare taxes (which are included in the employment tax gap estimate).
- [3] Is the difference between (1) the estimate of the individual income tax underreported tax gap where underreported tax is calculated based on all misreporting combined and (2) the estimate of the individual income tax underreported tax gap based on the sum of the tax gaps associated with each item where misreporting is calculated based on the misreporting of that item only. There may be differences if the marginal tax rates are different in these two situations.
- [4] Self-employment tax only.

Revised 10/2023

## **ISSUE TWO: Strategic Operating Plan (SOP) Assessment and Analysis**

**SOP Mapping:** Pertains to all SOP initiatives.

### **Executive Summary**

This issue was identified by the IRSAC based on various presentations and conversations members had with IRS personnel in the course of our work in 2024. We also heard presentations on the Strategic Operating Plan (SOP) and the update released in May 2024.

With the release of the SOP in 2023, the IRSAC mapped its recommendations to initiatives spelled out in the plan and we do the same for our 2024 report, having identified the relevant initiatives at the start of our work in developing issues presented by the IRS and those generated from the IRSAC. Thus, along with IRS personnel, the IRSAC is also focused on how the issues we work on and recommendations we make help the IRS achieve its numerous goals involving taxpayer services, enforcement, modernization, and human resources.

With the SOP serving as the guide for IRS activities and initiatives over a 10-year period, the IRSAC should continue to see how issues it identifies align with the SOP, as well as those identified by the IRS for the IRSAC. In doing so, we found a few areas where important issues were not highlighted in the SOP, and we found some areas where additional actions seem warranted to fully achieve particular objectives and initiatives.

### **Background**

After a brief explanation of the SOP process, this background provides information that the IRSAC gathered during our work on all of our 2024 report topics and is provided to support our recommendations.

The IRS Strategic Operating Plan (SOP) was released in April 2023<sup>21</sup> to provide objectives, initiatives and plans for how the \$80 billion of funds (later

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<sup>21</sup> IRS, Internal Revenue Service Inflation Reduction Act Strategic Operating Plan FY2023-2031, Pub. 3744, released in April 2023; <https://www.irs.gov/pub/irs-pdf/p3744.pdf>. Also see IR-2023-71 (Apr. 6, 2023), IRS unveils Strategic Operating Plan; ambitious effort details a decade of change; <https://www.irs.gov/newsroom/irs-unveils-strategic-operating-plan-ambitious-effort-details-a-decade-of-change>.

reduced to \$57.8 billion) over a 10-year period authorized by the Inflation Reduction Act of 2022 would be used by the IRS.<sup>22</sup> To help carry out the SOP, initiatives were assigned to various groups in the IRS to oversee them and the Transformation & Strategy Office (TSO) was created to “catalyze the successful transformation of the IRS.”<sup>23</sup> The IRS issued an update to the plan in May 2024 that summarizes key work of the first year, noting several operational improvements and ongoing work.<sup>24</sup>

In addition to SOP reports from the IRS, the Government Accountability Office (GAO) and the Treasury Inspector General for Tax Administration (TIGTA) also issued several reports in their work to review and assess the plan and use of the additional IRS funding. For example, TIGTA described its March 2024 report on the SOP as an evaluation “to assess the Internal Revenue Service’s (IRS) Strategic Operating Plan to determine whether it provides a clear framework on the IRS’s plans to transform itself to improve taxpayer service, modernize technology, and increase equity in tax administration.”<sup>25</sup>

While the SOP and its 2024 update supplement provide a good deal of information along with other reports from TIGTA, GAO and the IRS, the public is not reading these reports and may be hearing conflicting information about the purpose and value of the additional funding provided to the IRS. IRSAC members

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<sup>22</sup> The Inflation Reduction Act of 2022 (P.L. 117-169; Aug. 16, 2022); SEC. 10301. The Fiscal Responsibility Act of 2023 (P.L. 118-5; June 5, 2023) reduced this funding by about \$1.4 billion. The Further Consolidated Appropriations Act, 2024 (P.L. 118-47; Mar. 23, 2024) reduced the allocation for enforcement by \$20.2 billion. Thus, the additional 10-year funding is \$57.8 billion rather than \$79.4 billion.

<sup>23</sup> IR-2023-137 (July 28, 2023), IRS Selects new Chief Transformation and Strategy Officer to lead change efforts under the Inflation Reduction Act; David Padrino to oversee Strategic Operating Plan work to help taxpayers, drive agency improvements; <https://www.irs.gov/newsroom/irs-selects-new-chief-transformation-and-strategy-officer-to-lead-change-efforts-under-the-inflation-reduction-act-david-padrino-to-oversee-strategic-operating-plan-work-to-help-taxpayers-drive-agency>. Quote is from a presentation by Mr. Padrino given to the IRSAC on March 3, 2024.

<sup>24</sup> IR-2024-130 (May 2, 2024), IRS releases Strategic Operating Plan update outlining future priorities; transformation momentum accelerating following long list of successes for taxpayers; <https://www.irs.gov/newsroom/irs-releases-strategic-operating-plan-update-outlining-future-priorities-transformation-momentum-accelerating-following-long-list-of-successes-for-taxpayers>. Links to the SOP and updates can be found at <https://www.irs.gov/about-irs/irs-inflation-reduction-act-strategic-operating-plan>.

<sup>25</sup> TIGTA, Inflation Reduction Act: Continued Assessment of Transformation Efforts - Evaluation of Fiscal Year 2023 Delivery of Initiatives, Mar. 11, 2024; <https://www.tigta.gov/sites/default/files/reports/2024-03/2024ier010fr.pdf>.

were able to learn of detailed plans being developed and carried out to ensure that new actions will help the IRS meet its goals. We also learned that broad input is obtained from IRS employees in carrying out the SOP initiatives. Again though, the public is unaware of the care and attention being given to ensure success in carrying out the SOP and optimally using the IRA 2022 funds.<sup>26</sup>

The SOP includes 42 initiatives among five broad objectives. Generally, these initiatives are described in broad terms, such as Initiative 1.8 to deliver proactive alerts. The plan does not highlight measurable goals that seem appropriate for many of the initiatives. For example, Initiative 2.6, Expand engagement with non-filers could state measurable goals. Specifically, this initiative states on page 58:

Success for this initiative would include an increase in non-filers who are detected and contacted in a timely manner so they can voluntarily comply; an increase in simple options that reflect the reasons why individuals and entities do not file, thus improving the taxpayer experience; an increase in the number of taxpayers who self-correct (i.e., pay on their own without intervention); and a reduction in the number of taxpayers who face additional penalties.

Alternatively, the above could be stated as a measurable goal as follows:

Success for this initiative would include a 10% annual increase in non-filers who are detected and contacted within 30 days of the due date of their income tax return so they can voluntarily comply; a public report issued in 2025 to identify the reasons why individuals and entities do not file and, by 2027, an increase in simple filings options in response to the findings of this report, thus improving the taxpayer experience; a 5% annual increase in the percentage of taxpayers who self-correct (i.e.,

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<sup>26</sup> We acknowledge a good example of public recognition was the IRS news announcement in September 2024 that Taxpayer Services Chief Kenneth C. Corbin received the 2024 Government Executive of the Year Award from the Service to the Citizen Awards Program. Also, over 100 IRS employees were named as 2024 Service to the Citizen Award winners for service to taxpayers. See IR-2024-239 (Sept. 17, 2024); <https://www.irs.gov/newsroom/2024-service-to-the-citizen-awards-kenneth-c-corbin-wins-government-executive-of-the-year>.

pay on their own without notification from the IRS); and a 5% annual reduction in the number of taxpayers who face additional penalties.

While such measurable goals likely exist in carrying out the SOP, making them part of the SOP report released to the public increases transparency for all interested parties.

A significant theme of the SOP is modernization and Commissioner Werfel has noted in public remarks about digitalization of all IRS functions (although still allowing services for taxpayers who do not use the Internet). Per Commissioner Werfel, taxpayers who want to meet all of their tax responsibilities and interact with the IRS “in a completely digital manner” should be able to do so.<sup>27</sup> In a speech given on the one year anniversary of his appointment, Commissioner Werfel stated that they are building an IRS “where *all* taxpayers can meet *all* of their responsibilities, including *all* interactions with the IRS – from questions to payments to resolutions – in a completely digital manner if they prefer.”<sup>28</sup>

In a July 2024 news release on expansion of online tools for taxpayers, the IRS stated:

“Taxpayers deserve the same functionality in their online accounts that they experience with their bank or other financial institutions. As detailed in the Strategic Operating Plan, the IRS is working to transform its operations to enable a future in which all taxpayers can meet their responsibilities, including interactions with the IRS, in a digital manner if they prefer. As part of this vision, taxpayers will be able to securely file all documents and respond to all notices online as well as securely access and download their data and account history.”<sup>29</sup>

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<sup>27</sup> “Digital” appears 86 times in the SOP Supplement (Pub. 3744a, May 2024); <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>. Also in Pub. 3744a, Commissioner Werfel stresses digitalization and the ability to interact only digitally with the IRS, p. ii.

<sup>28</sup> Speech on March 18, 2024 at American University; <https://www.irs.gov/newsroom/commissioner-danny-werfel-1-year-anniversary-speech-the-future-irs-transforming-for-a-digital-world>. Presentation also available from C-SPAN at <https://www.c-span.org/video/?534331-1/commissioner-werfel-mmodernizing-irs>.

<sup>29</sup> IR-2024-196 (July 25, 2024); <https://www.irs.gov/newsroom/irs-continues-to-expand-taxpayer-services-and-online-tools-key-milestones-reached-with-inflation-reduction-act-funding>.

The need to enable digitalization—from e-filing to online taxpayer accounts, is crucial as the vast majority of taxpayers carry out their individual and business activities in a digital manner with tools and resources available 24/7, without the need for paper and usually without direct human interaction. This digital reality requires more paper processes to become digital and online tools to be monitored to ensure the information is current and there are no technical issues. In addition, the Internal Revenue Code is not keeping up to date with the modern world and without changes, paper is still required for some activities.<sup>30</sup>

While a focus on digitalization is appropriate for modernization and efficiency, some taxpayers will not be able to fully participate in using these new tools and capabilities to interact with the IRS because they do not have access to broadband or do not have sufficient technology. Per the GAO, “millions of Americans either don’t have broadband available to them or can’t afford to pay for it. The gap between those with and without access to broadband has become known as the ‘digital divide.’”<sup>31</sup>

A modern element of digitalization is the use of artificial intelligence (AI). The IRS has noted its use of AI in modernization efforts, such as to “detect tax cheating, identify emerging compliance threats and improve case selection tools to avoid burdening taxpayers with needless “no-change” audits.” For example, the IRS announced in September 2023 that it would use AI to help in selecting large partnership returns for examination.<sup>32</sup> These announcements have not also explained the nature of the AI tools and protections in place to avoid misuse.

The U.S. Department of State estimates that about nine million U.S. citizens live outside of the U.S.<sup>33</sup> These citizens with taxable income have U.S. filing

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<sup>30</sup> For example, Section 6231, Notice of proceedings and adjustments, requires the IRS to mail certain notices to a partnership and its representative.

<sup>31</sup> GAO, Closing the Digital Divide for the Millions of American without Broadband, Feb. 1, 2023; <https://www.gao.gov/blog/closing-digital-divide-millions-americans-without-broadband>.

<sup>32</sup> IR-2023-166 (Sept. 8, 2023), IRS announces sweeping effort to restore fairness to tax system with Inflation Reduction Act funding; new compliance efforts focused on increasing scrutiny on high-income, partnerships, corporations and promoters abusing tax rules on the books; <https://www.irs.gov/newsroom/irs-announces-sweeping-effort-to-restore-fairness-to-tax-system-with-inflation-reduction-act-funding-new-compliance-efforts>.

<sup>33</sup> U.S. Dept. of State, Consular Affairs By the Numbers; <https://travel.state.gov/content/dam/travel/CA-By-the-Number-2020.pdf>.



obligations, yet cannot easily access as many services as filers living in the U.S. The 2023 report to Congress from the National Taxpayer Advocate lists as Most Serious Problem #9, Compliance Challenges for Taxpayers Abroad. The report notes such taxpayers “face vast difficulties in complying with their U.S. tax obligations” and “the IRS offers limited assistance and guidance. ... Taxpayers lack accessible, real-time customer service assistance from the IRS.”<sup>34</sup> The SOP does not directly address these issues.

A few topics raised by the IRSAC in this year’s report deal with return preparers. As part of our initial writeups on issues we receive from the IRS and those the IRSAC generates on its own, we identify the SOP initiatives that the issue relates to. We were unable to do this for the topics involving return preparers.

Identity theft is a significant tax and non-tax matter. The National Taxpayer Advocate lists identity theft and the challenges and delays in resolving these issues for taxpayers as Number 6 of the ten most serious problems.<sup>35</sup> Despite the importance of this topic, it is only mentioned in the SOP in Initiative 4.4, Continue to ensure data security; there is no specific goal to reduce the time in resolving these matters and nothing specific about finding ways to reduce the chances of tax-related identity theft. There is no mention of identity theft in the May 2024 SOP Annual Update Supplement.

SOP Initiative 1.7 involves providing earlier legal certainty to afford taxpayers “upfront clarity and certainty” provided by guidance on tax matters. The SOP notes: “In coordination with the Office of Chief Counsel and the Department of the Treasury Office of Tax Policy, we will expand capacity to provide as much certainty on tax issues as possible. This will include issuing more legal guidance, interpreting the tax laws to address areas of uncertainty for all taxpayer segments, including current issues and those related to new legislation.”

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<sup>34</sup> IRS, National Taxpayer Advocate Annual Report to Congress 2023, pp. 116 to 131; <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/>.

<sup>35</sup> NTA, National Taxpayer Advocate Annual Report to Congress 2023, Jan. 2024, pp. 78 to 86; <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/>.



In June 2024, the U.S. Supreme Court issued an opinion (*Loper Bright*) that ends the *Chevron* deference doctrine that was created by the Court in 1984.<sup>36</sup> The *Loper Bright* decision raises new issues for the IRS, taxpayers and practitioners as to the effect on any existing IRS guidance and possible changes to the guidance process going forward. In addition, in July 2024, the Court issued an opinion (*Corner Post*) that changes when a claim under the Administrative Procedures Act (APA) may begin to allow a claim within six years from when a party is injured rather than six years from publication of the rule.<sup>37</sup> We realize these are challenging topics that require deep analysis, some of which might not be possible until there are judicial opinions that illustrate how courts are applying the *Loper Bright* and *Corner Post* decisions.

### **Recommendations**

The following recommendations are offered to improve execution of SOP initiatives, ensure that all key operational matters are covered in the SOP, and to provide more information about the SOP to the public.

1. Provide more details in a format accessible for the public on how the IRS is carrying out the SOP including the planning and assessment measures applied to reach the goals for an improved tax agency, modernized and responsive taxpayer services, and more effective enforcement activities. This information could be added to the Form 1040 instructions, released as a Fact Sheet, posted in small segments on social media, and in interviews of senior IRS officials with news outlets.
2. Add measurable objectives to the SOP initiatives where appropriate, as illustrated in this report (above) for Initiative 2.6, to increase transparency and efficiency of the SOP.
3. Broaden digitalization efforts to include the following:

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<sup>36</sup> *Loper Bright Enterprises, et al v. Raimondo, Secretary of Commerce, et al*, No. 22-451 (USSC, June 28, 2024).

<sup>37</sup> *Corner Post, Inc. v. Board of Governors of The Federal Reserve System*, No. 22-1008 (USSC, July 1, 2024).

- a. Identify all IRC provisions that require mailing or use of paper documents and share this list with Congress noting the changes needed to allow for solely digital interactions between the IRS and taxpayers.<sup>38</sup> Without law changes to expand distribution to include digital means such as posting in a taxpayer's online account with email notification, the IRS will not be able to achieve its goals to allow any taxpayer to interact completely digitally with the IRS.
  - b. Ensure that online tools including websites such as Interactive Tax Assistants, are current and regularly tested by IRS personnel and taxpayers to ensure they are helpful.
  - c. Review all filing processes to ensure there is a digital element. For example, taxpayers using Free File and Direct File should also be able to use these tools to file an amended return. All tax forms should allow for e-filing.
  - d. Pursue digital capability and allowance in tax matters involving issuers of information returns and recipients to better enable taxpayers to engage digitally for all tax functions. For example, the Information Returns Intake System (IRIS) system should be enhanced to have the information filed with the IRS also go directly to the recipients' online accounts. In addition, all information returns should be accessible on the taxpayer's transcript promptly after receipt by the IRS.
  - e. Work with other federal agencies to provide universal access to broadband and related technology for all Americans via free or low-cost avenues.
4. Create and make public the IRS standards for the use of AI tools. This should include information about (a) how risks are minimized regarding equity in operation and data security, (b) ensuring the use of reliable data sources, and (c) ensuring that formal oversight of the IRS's use of AI tools

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<sup>38</sup> The change needed might be to expand definitions at Section 7701 to include mail defined as including any electronic delivery such as by email or posting in an online account.

exists. The Office of Management and Budget (OMB) memorandum of March 28, 2024, lays out AI governance plans for agencies including a requirement for agencies to appoint a Chief AI Officer by the end of May 2024.<sup>39</sup> The SOP would benefit from coverage of AI protections currently in place and those to be added. A news release on the application of the OMB memo and other AI measures would also be helpful given that some news releases have noted that the IRS is using AI.<sup>40</sup>

5. Expand the SOP to specifically address the needs of U.S. taxpayers living abroad. Possible avenues for additional services include operation of Volunteer Income Tax Assistance (VITA) Program sites at U.S. embassies in countries with a large number of U.S. taxpayers, as well as operation of virtual VITA sites. The IRS Tax Outreach, Partnership and Education (TOPE) group should be funded to find and partner with organizations outside of the U.S. that can help in outreaching to citizens living abroad.
6. Expand the SOP to include more specific items involving return preparers (beyond preparer online accounts), such as to address preparer issues presented elsewhere in this report (PTIN management (General Issue 10); oversight efforts to encourage more practitioners to pursue competency standards, engage in continuing education and have limited practice rights (General Issue 11); and practice management education for Enrolled Agents (General Issue 12)). Updating Circular 230 should be a priority as relevant to these recommendations and to address areas that are out of date such as the section on registered tax return preparers.
7. Expand the description of Initiative 4.4 on data security to include a specific goal to reduce the time in resolving tax-related identity theft issues and be specific that the IRS continues to work on finding ways to reduce the chances of tax-related identity theft (we realize that specifics cannot be

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<sup>39</sup> OMB, Memorandum For the Heads of Executive Departments and Agencies, M-24-10, Mar. 28, 2024; <https://www.whitehouse.gov/wp-content/uploads/2024/03/M-24-10-Advancing-Governance-Innovation-and-Risk-Management-for-Agency-Use-of-Artificial-Intelligence.pdf>.

<sup>40</sup> See for example, IR-2023-166, *supra*.

disclosed on this but stating that such plans are part of data security goals would be useful for stakeholders to know).

8. Expand activities under SOP Initiative 1.7 on earlier legal certainty to include study of the impact of the *Loper Bright* and *Corner Post* decisions and keeping the public informed of any changes in the IRS guidance process in light of these decisions.

## **ISSUE THREE: Reporting of Level of Service (LOS) Data**

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**SOP Mapping:** Objective 1 and Initiative 4.7.

### **Executive Summary**

With funding provided by the Inflation Reduction Act of 2022<sup>41</sup> (IRA) the IRS improved its publicly reported Level of Service (LOS), which is generally understood to represent how many calls the IRS answers versus how many calls it receives in any given fiscal year, from 15% in fiscal 2021 to 85% in fiscal 2023.<sup>42</sup> While this has been cited by various oversight agencies as a remarkable improvement, those same agencies, the Treasury Inspector General for Tax Administration (TIGTA; <https://www.tigta.gov>) and the National Taxpayer Advocate (NTA; <https://irs.gov/taxpayer-advocate>) have also reported continuing confusion and potential overestimation in a true (agency-wide) level of service.<sup>43</sup> These agencies suggest that the general public assumes the publicly reported LOS covers all taxpayer inbound communications. However, in reality, the reported LOS only reports on access to its Account Management (AM) phone lines, excluding calls to its Compliance, Collections and Paid Preparer lines and other functions, and is further inflated as it excludes hang-ups and includes re-routes to its automated response systems, even when the caller may have wanted to speak to a live assistor.

Secondly, both the NTA and TIGTA call into question quality as a needed component of LOS. As they report, answering the phone is not a holistic measure of service or satisfaction and they recommend that the IRS incorporate quality into the measure or find a means to report on it separately.<sup>44</sup>

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<sup>41</sup> P.L. 117-169 (Aug. 16, 2024).

<sup>42</sup> TIGTA, Ref. No. 2023-IE-R010, Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season (2023); <https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf>. Also see National Taxpayer Advocate 2023 Annual Report to Congress (Most Serious Problem #4: Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service), <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/full-report/>.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

As a first step toward a more transparent and comprehensive metric, leaving the quality recommendation from NTA and TIGTA for a second step, the IRSAC recommends that the Commissioner and IRS leaders revisit the decision to report only on calls into its AM lines or reposition its LOS for what it actually is – calls taken on the AM lines (which does represent 77% to 85% of inbound traffic).<sup>45</sup> Additionally, the IRSAC recommends that this metric be reported as two subsidiary metrics, one for calls answered by a live assistor (used interchangeably with Customer Service Representative or CSR) and calls re-routed to an automated response. The IRSAC does agree that hang-ups, as defined as a caller who hangs-up before even listening to the opening message on its lines should be excluded. Finally, as the IRS also explores opportunities to capture service quality, the IRSAC recommends that the IRS explore a new metric (beyond LOS) that accommodates all existing service channels.

## **Background**

IR-2024-07<sup>46</sup> announced the release of the National Taxpayer Advocate’s 2023 Annual Report to Congress.<sup>47</sup> Telephone assistance data was one area highlighted in this news release: “The report says the IRS deserves credit for achieving its goal of providing an 85% Level of Service on its AM [Accounts Management] telephone lines during the filing season, but it points out that the LOS is a highly technical measure that excludes the majority of calls the IRS receives from its calculation. During the same period that the IRS achieved an LOS of 85%, IRS employees answered only 35% of all calls received. For the full fiscal year, IRS employees answered 29% of all calls received.”<sup>48</sup>

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<sup>45</sup> National Taxpayer Advocate 2023 Annual Report to Congress; <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/>.

<sup>46</sup> IR-2024-07 (Jan. 10, 2024), National Taxpayer Advocate delivers Annual Report to Congress; focuses on taxpayer impact of paper processing delays <https://www.irs.gov/newsroom/national-taxpayer-advocate-delivers-annual-report-to-congress-focuses-on-taxpayer-impact-of-paper-processing-delays>.

<sup>47</sup> National Taxpayer Advocate 2023 Annual Report to Congress; <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/>.

<sup>48</sup> *Ibid.* Most Serious Problem #4 – “TELEPHONE AND IN-PERSON SERVICE: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service.” Per footnote 21 of the

This statement highlights an apparent need for clarification on what data is being reported and its sources. The public will lose confidence in IRS data reporting if it doesn't appear to be correctly reported. In addition, with the growing use of new methods on how the IRS serves taxpayers, such as chatbots, and online accounts for self-service, the IRS should consider the effect these new methods have on providing service to taxpayers including new measures and benchmarks for all LOS data ensuring that the data is helping the IRS to best serve taxpayers in an efficient and effective manner.

Diving deeper, the NTA takes exception to the current calculation for three reasons. First, the calculation only includes calls into its AM lines (not all lines), second it includes transfers to automated responses when in fact the caller may have wanted to reach a live assistor, and third, it doesn't account for situations where a Customer Service Representative (CSR) was unable to answer the caller's questions or the taxpayer had to call multiple times or was dissatisfied with the service they received from a CSR for other reasons. This apparent inconsistency between what the IRS reports both in its public testimony and press releases, and what the National Taxpayer Advocate believes is a more reasonable reporting, is creating confusion among the various stakeholders interested in understanding and assuring the IRS is properly focused on delivering the best service.

The critique of LOS is not restricted to the observations and opinion of the NTA. TIGTA also cites in its own report<sup>49</sup> that the IRS does not include all its lines in its calculation of LOS. TIGTA highlights that at the time of its report, the IRS only

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NTA report, page 52: "Percentage of Enterprise Calls Answered by a Live Assistor" is calculated by dividing "Enterprise Calls Answered by a Live Assistor" by "Enterprise Total Call Attempts." "Enterprise Total Call Attempts" refers to all calls across all IRS phone lines. The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The LOS formula is: (Assistor Calls Answered + Automated Calls Answered (Info Messages)) divided by (Assistor Calls Answered + Automated Calls Answered (Info Messages) + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signal or Network Incompletes) + (Add either Calculated Network Disconnects or Total Disconnects))."

<sup>49</sup> TIGTA, Ref. No. 2023-IE-R010, *supra*.

reported on its 35 Account Management lines. In its year-end (2023) report,<sup>50</sup> TIGTA reported that the IRS operates 102 toll free lines. Wait times on these other 67 (102 minus 35) lines exceed those of the fully staffed AM lines. The presumption is that including these other lines in a holistic view and LOS calculation would lower the LOS percentage below what's reported and committed to by the IRS.<sup>51</sup>

Upon discovering discrepancies in these various government reports, the IRSAC initiated an effort to understand the calculation which the IRS has reported for over two decades. The IRSAC examined the calculation from the taxpayer's perspective and assessed its reasonableness, expressing concern that reporting varied figures for LOS causes confusion and raises doubt about the credibility of any of the figures.

Equipped with the reports, the IRSAC requested and met with IRS subject matter experts in the Taxpayer Services Division (formerly Wage and Investment Division) who were extremely helpful and quite transparent as to how LOS is calculated, how this LOS is used to shape operational strategies, and how it supports budget conversations with both the U.S. Department of Treasury, the White House Office of Management and Budget, and the U.S. Congress.

In its investigations, the IRSAC explored the various points of disagreement in measuring LOS. The first point involves handling and reporting on hang-ups by callers. The NTA believes hang-ups should be included in LOS and the IRS Taxpayer Services Division does not. The IRSAC agrees with the IRS Taxpayer Services Division in this position. If one dials an IRS 800 number and then hangs-up prior to even listening to the introductory message, then the caller has had second thoughts and is not hanging up because of some perception of an inconvenient wait time. That caller could be hanging up for numerous reasons such as a need to deal with another more urgent matter.

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<sup>50</sup> TIGTA, Ref. No. 2024-IE-R001, Actions Are Needed to Improve the Quality of Customer Service in Telephone Operations (Nov 2023), <https://www.tigta.gov/sites/default/files/reports/2023-11/2024ier001fr.pdf>.

<sup>51</sup> Remarks by Secretary of the Treasury Janet L. Yellen at the IRS facility in New Carrollton, Maryland, <https://home.treasury.gov/news/press-releases/jy0952>.



The second point of difference in measuring LOS is the IRS Taxpayer Services Division decision to include only access to its Account Management lines and exclude calls on all lines – especially calls into Compliance, Collections or Paid Preparer Support lines. The IRSAC believes the IRS should revisit the lines it excludes. For example, a call into Compliance is a very critical call and should be included in measuring LOS data. But a call whose purpose is administrative in nature does not warrant inclusion.

The third point of difference is the IRS decision to include calls re-routed to an automated response. While the IRSAC can see both sides of this issue – for example, the caller really wants to talk to a human being, the IRS does provide options within its call tree to hold for a live representative and the IRS is already expanding call back capabilities. Therefore, the IRSAC sees no issue with including re-routed calls to automated responses.

The fourth point of difference in measurement is the IRS portraying LOS as a “service” metric when it’s unclear whether the caller had their issue resolved, or, as the measure suggests, they actually received “service.” Both the NTA and TIGTA have recommended in their respective reports<sup>52</sup> that the IRS incorporate quality of service into this or a similar metric, a suggestion supported by the IRSAC. While the IRSAC does not offer additional guidance in this report, it acknowledges that industry best practice includes capturing and reporting on caller satisfaction, not simply whether the issue was resolved, but also whether the caller’s question was satisfactorily addressed.

Lastly, as the IRSAC explored LOS, it recognized that several channels, including new and emerging service opportunities enabled by the IRS, are not included in the calculation of LOS. LOS helps assess staffing needs to ensure that a live assistor can be reached with ease, so it makes sense to exclude these other channels. For example, LOS doesn’t account for access to IRS Walk-In Sites or programs such as the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) sites, or [www.irs.gov](http://www.irs.gov), the self-service channel

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<sup>52</sup> TIGTA, Ref. No. 2023-IE-R010, *supra*, and National Taxpayer Advocate 2023 Annual Report to Congress, *supra*.

available to all categories of taxpayers and tax professionals. An even more interesting consideration might be how to account for the service that is essentially outsourced to tax professionals, given that roughly 55% of U.S. individual taxpayers<sup>53</sup> use a professional tax preparer each year to prepare and file their taxes. Tax preparers play a vital role in servicing taxpayers and helping to ensure compliance for those who employ them.

### **Recommendations**

To improve the value of LOS data, to prevent conflicting reports on this data and to consider new and emerging avenues of providing support to taxpayers, the IRSAC recommends the following:

1. Revisit the IRS decision to report in its LOS only calls into its Account Management lines, meaning adding in other lines or reposition its LOS to explicitly state what it is – calls taken on the AM lines.
2. Introduce two subsidiary metrics of the LOS, one for calls answered by a Customer Service Representative (CSR) and another for calls re-routed to an automated response.
3. Explore a new metric that accommodates all service channels that existed.
4. Continue efforts in response to both NTA and TIGTA recommendations to create a new, forward-looking metric that includes issue resolution – specifically, whether the taxpayer successfully accomplished what they intended by contacting the IRS for assistance.

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<sup>53</sup> IRS 2024 Filing Season Statistics, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-may-10-2024>.

## **ISSUE FOUR: Hiring**

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**SOP Mapping:** Pertains to Objective 5.

### **Executive Summary**

This issue was identified by the IRSAC due to the importance of hiring and retention for the IRS. Given the diversity of work experiences of members of the IRSAC, we believed this topic could lead to some recommendations to help the IRS meet its hiring goals as laid out in the Strategic Operating Plan issued in April 2023.

In meetings with personnel from the Human Capital Office (HCO), IRSAC members had the opportunity to learn more about IRS hiring activities and successes. We also reviewed information posted at various recruitment websites. Our recommendations primarily address the need for greater transparency as to the unique advantages of IRS employment that will help potential recruits readily see these benefits rather than being distracted by confusing terminology or postings of low salaries that do not tell the complete picture about careers at the IRS.

### **Background**

The IRS Strategic Operating Plan states that the IRS aims to “become an employer of choice across government and industry.”<sup>54</sup>

In recent years and more actively with the additional 10-year funding provided by the Inflation Reduction Act of 2022, the IRS has been working to hire employees. For example, in September 2023, the IRS announced its intent to hire 3,700 “higher-graded revenue agents” for positions in over 250 locations throughout the U.S.<sup>55</sup> Hiring individuals for accounting/auditing positions is difficult

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<sup>54</sup> IRS, Internal Revenue Service Inflation Reduction Act Strategic Operating Plan FY2023 - 2031, April 2023, Pub. 3744, pp. 10, 12 and 132; <https://www.irs.gov/pub/irs-pdf/p3744.pdf>. This goal is also included in the IRA Strategic Operating Plan Annual Update Supplement, May 2024, Pub. 3744a, pp. 3 and 10; <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>.

<sup>55</sup> IR-2023-172 (Sept. 15, 2023); <https://www.irs.gov/newsroom/irs-looks-to-hire-3700-employees-nationwide-to-help-expand-compliance-for-large-corporations-and-complex-partnerships-experienced-accountants-encouraged-to-apply-for-revenue-agent-positions>.

in the private sector today due to insufficient supply and higher pay levels in some non-accounting business positions. The IRS may face greater difficulties due to lack of awareness or interest by the individuals who the IRS seeks to hire, salary limitations, and possible delays in the hiring process.

The National Taxpayer Advocate's 2023 Report to Congress listed IRS hiring, recruitment, and training as the #2 "Most Serious Problem."<sup>56</sup> This report noted that "the IRS takes much too long to approve, process, and list job announcements, and its initial screening of applications sometimes results in selecting candidates for consideration who may not be the most qualified."

In meetings with employees from HCO and other units, we learned of various new actions to attract employees. These new activities include:

- Use of three-year service agreements in hiring revenue agents where the employee receives a recruitment incentive each year for three years. This may include an additional \$5,000 each year for three years; with larger amounts offered to those starting at higher grade (GS) levels.
- Additional fringe benefits such as the possibility of tuition reimbursement, assistance with student loan repayment, and childcare subsidies.
- Use of Direct Hire authority to speed up the hiring process.
- Actions to accelerate the hiring process to be about 40 days from the making of a tentative offer to the start of onboarding.
- Recruitment events that include on-site interviews. These events are posted on the IRS website (<https://www.jobs.irs.gov/events>) and flyers were made available for accounting faculty at universities and others (see example below). Both in-person and virtual events are available.

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<sup>56</sup> Taxpayer Advocate Service, 2023 Annual Report to Congress; <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/most-serious-problems/>.

# IRS Career Opportunities San Jose, CA

## Revenue Agents

The IRS is looking for new and experienced accounting professionals to plan, conduct, and lead the examination of individual, business, corporate, partnership, and S corporation returns.

## Revenue Officers

IRS Revenue Officers collect tax and secure delinquent tax returns from taxpayers who have not resolved their obligations in response to notices and correspondence.

## Tax Specialists

Tax Specialists plan and conduct examinations of individuals and small businesses, advise taxpayers of their rights in an examination, ensure appropriate tax assessments are made, make appropriate penalty and interest determinations.

Careers with Purpose.



June 12, 2024  
9:00 AM - 4:30 PM

During this event, you will be able to meet IRS recruiters and hiring managers, who will review resumes and conduct on-site interviews. Click the link or scan the QR Code to register to attend. Complete details about location availability for each position will be provided as part of registration.

55 South Market Street  
San Jose, CA 95113

Remember to bring your:

- Resume
- CPA Certificate or College Transcripts
- One form of valid ID
- Note: U.S. Citizenship Required



[jobs.irs.gov/events](https://jobs.irs.gov/events)

- Preceding the 2023 and 2024 IRS Nationwide Tax Forums, the IRS reached out to accounting faculty in the cities where forums were held to invite faculty and students to attend a day of the forum at no charge. Special events were held for the students. For 2024, a more deliberate effort was made based on the 2023 activities, including a flyer<sup>57</sup> announcing the forum dates, how to register at no charge, and noting that an “exclusive recruitment event” would be held for qualified applicants.
- Recruiting events were held at the 2024 IRS Nationwide Tax Forums for registered attendees.
- Some remote work is available for many employees, including in the first year.
- Exit interviews are used for some employees as well as “stay” interviews to help with retention.

<sup>57</sup> IRS, 2024 IRS Nationwide Tax Forum Tax Adventure, Pub. 5914-A; <https://www.irs.gov/pub/irs-pdf/p5914a.pdf>.

- The new hiring website for the IRS announced in June 2024<sup>58</sup> (<https://www.jobs.irs.gov/>) is attractive with pictures, relatively straightforward navigation, and options to search for positions based on location, pay, and positions for recent graduates.

In reviewing the IRS jobs website that opened in June 2024, we found some items that we think will hinder hiring some of the employees the IRS seeks and needs. These distractors to hiring include the following:

- The website for careers in accounting and business does not list Revenue Officer. [<https://www.jobs.irs.gov/accounting-business>]
- The website to check for available Revenue Agent positions includes some terminology which is not typical in describing career positions for these candidates. These terms include:
  - “12 month register”
  - “MSP, Direct Hire, 12 Month Register”

[<https://irs.usajobs.gov/search/results/?a=TR93&s=relevance&sd=asc&p=1&j=0512&hp=public>]

Also at this website, it is not clear what experience is needed for the different listed Revenue Agent positions, leaving viewers to guess that the lowest starting salary of \$39,576 is entry level whereas the listing for \$98,496 is for an experienced hire but there is no indication of what experience is needed until the user pursues more clicks but may find references to “grade” positions that are unlikely to be understood by anyone outside of the IRS.

- The website for available Tax Specialist positions includes the terms “12 month register” and “6-month register.”

[<https://irs.usajobs.gov/search/results/?a=TR93&s=relevance&sd=asc&p=1&j=0526&hp=public>]

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<sup>58</sup> IR-2024-154 (June 13 2024), “IRS updated careers website aims to better connect with job seekers; part of larger agency recruiting efforts to serve taxpayers, the nation;” <https://www.irs.gov/newsroom/irs-updated-careers-website-aims-to-better-connect-with-job-seekers-part-of-larger-agency-recruiting-efforts-to-serve-taxpayers-the-nation>.

- The website about a position labeled as “Pathways Recent Graduate Program Internal Revenue Agent 9 Month Roster” includes in the summary of the position: “Pathways is an Excepted Service Appointment, Schedule D, 5 CFR Part 362, and may NOT be combined with other Excepted Service Appointments (e.g., Schedule A).” It is unlikely that most job seekers will have any idea what the reference to the Code of Federal Regulations is or how to find it; likely this reference will discourage them from continuing on the site.  
[\[https://irs.usajobs.gov/job/795575000\]](https://irs.usajobs.gov/job/795575000)
- The listing of starting salary for a Revenue Agent at \$39,576 is unlikely to attract recent graduates who majored in accounting because this salary is less than what most will be offered by accounting firms and in other business careers (salaries differ by region and in some regions, the \$39,576 is about 50% of what accounting firms may offer). There is no mention along with this salary that it will be higher for certain cities, the availability of a starting bonus of \$15,000 paid over three years, and unlike many accounting careers, that this is mostly a 40-hour per week career.

A review of many listings at the IRS jobs website did not indicate that any are for part-time work. The availability of part-time work may lead to increased ability to hire more employees to provide needed taxpayer services including during evening and weekend hours. A TIGTA report on Taxpayer Assistance Centers (TACs) noted that high demand by taxpayers for assistance on Saturdays. The report also noted that the Field Assistance unit (FA) that oversees the TACs cannot require employees to work on Saturdays, so the IRS relies on volunteers including from other IRS functions.<sup>59</sup> The National Taxpayer Advocate observes that since typical hours for a TAC are Monday through Friday from 8 am to 4:30

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<sup>59</sup> TIGTA, Taxpayer Assistance Centers Generally Provided Quality Service, but Additional Actions Are Needed to Reduce Taxpayer Burden, May 10, 2024, pp. 10 to 12; <https://www.tigta.gov/sites/default/files/reports/2024-05/2024100022fr.pdf>.

pm, some taxpayers are unable to obtain assistance. The NTA suggests that Saturday TAC services should be available year-round.<sup>60</sup>

In FY 2023, over 67,000 volunteers worked at Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) sites to assist eligible taxpayers get their tax return prepared for free.<sup>61</sup> This represents a large group of individuals who have learned a good amount about the tax law through required training, and many are college students. These individuals who are interested in taxation and service might not be aware of career opportunities at the IRS. In addition, there are many law school and accounting students volunteering at Low Income Taxpayer Clinics (LITC) who might not be aware of careers at the IRS.

### **Recommendations**

1. *Provide key, engaging highlights in every job posting using understandable terminology:* While there likely are standards for posting federal government jobs, the IRS should use its own jobs and careers website (<https://irs.usajobs.gov/>) to provide more details that help potential applicants better understand the nature of the work for every career category and the full package of benefits and the salary structure in various cities and grade levels. Publicity about careers at the IRS should highlight unique features, such as a 40-hour work week for accountants.
2. *Hire part-time and flexible schedule employees where appropriate:* Hiring part-time and flexible schedule employees for certain positions, particularly for in-person or evening/weekend hours may help in being able to better staff Taxpayer Assistance Centers (TACs) for hours that will better serve more taxpayers. Other positions at the IRS might also be conducive to hiring well-qualified part-time and flexible schedule employees who are not able

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<sup>60</sup> National Taxpayer Advocate, Annual Report to Congress 2023, January 2024, Most Serious Issue #4, pp. 49 and 61; <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/most-serious-problems/>.

<sup>61</sup> IRS, 2023 Data Book, p. 22; <https://www.irs.gov/pub/irs-pdf/p555b.pdf>; 67,476 volunteers at VITA and TCE sites prepared almost 2.6 million returns in FY 2023.



to work 40 hours per week or who seek to supplement their salary earned elsewhere.

3. *Create materials to ensure VITA, TCE and LITC volunteers know of career opportunities at the IRS:* These volunteers represent an excellent group of individuals with tax knowledge, skills, and understanding of some IRS procedures, yet likely have little understanding of career options at the IRS. Information, including personalized communications, should be provided to these volunteers.

## ISSUE FIVE: Online Accounts Promotion

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**SOP Mapping:** 1.2, 1.4, 1.6, 1.8, 1.10, 1.11, 1.12, Objective 4.

### **Executive Summary**

The shift from phone-only customer service and technical support to internet based self-service tools, the enablement of chat and more recently, artificial intelligence enabled chatbots, began over three decades ago in the private sector. This transition has been driven by advancements in computing power, the ubiquity of internet access (including now on smart phones), artificial intelligence, and most importantly, increased consumer demand for near instant and 24/7 support. Additionally, digitally enabled customer service solutions offer cost-efficiency to both businesses and government. Although the IRS has been slower to react than the private sector, the Inflation Reduction Act of 2022<sup>62</sup> (IRA) infused a substantial amount of funding to be used for tax systems modernization and attendant technological advances.

Among the IRS's many commitments to modernization, several self-service tools are included within the initiatives outlined in the Strategic Operating Plan<sup>63</sup> (SOP) and the SOP 2024 Update,<sup>64</sup> and its Supplement.<sup>65</sup> Also, as evidenced in a July 2024 IRS press release,<sup>66</sup> there is expanded functionality for the Individual Online Account (IOLA), the Business Tax Account (BTA), and the Tax Pro Account. For these tools to be widely adopted, taxpayers and tax professionals must be aware of their availability. These needs are echoed in the National Taxpayer Advocate's 2023 Annual Report to Congress.<sup>67</sup>

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<sup>62</sup> P.L. 117-169 (Aug. 16, 2024).

<sup>63</sup> Internal Revenue Service Inflation Reduction Strategic Operating Plan FY2023-2031 at <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

<sup>64</sup> IRS 2024 IRA Strategic Operating Plan Annual Update; <https://www.irs.gov/pub/irs-pdf/p3744b.pdf>.

<sup>65</sup> IRS 2024 IRA Strategic Operating Plan Annual Update Supplement; <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>.

<sup>66</sup> IR-2024-196 (July 25, 2024), IRS continues to expand taxpayer services and online tools, key milestones reached with Inflation Reduction Act funding; <https://www.irs.gov/newsroom/irs-continues-to-expand-taxpayer-services-and-online-tools-key-milestones-reached-with-inflation-reduction-act-funding>.

<sup>67</sup> National Taxpayer Advocate 2023 Annual Report to Congress (Most Serious Problem #7: Online Account Access for Taxpayers and Tax Professionals); <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/full-report/>.

The feature-set for each of these online accounts is planned by the IRS to continue to evolve over time enabling the rollout of new features in phases. However, adoption is essential for momentum and success of the adoption and use by taxpayers and tax professionals. Successful self-service tools drive satisfaction and efficiencies which result in cost-savings. The IRSAC recommends the IRS develop and implement a marketing plan including a number of new approaches beyond its present social media and other awareness activities.

### **Background**

IR-2024-07<sup>68</sup> announced the release of the National Taxpayer Advocate's 2023 Annual Report to Congress.<sup>69</sup> In this report, the National Taxpayer Advocate (NTA) emphasizes the significant advantage of enabling online accounts for individual taxpayers, business taxpayers and tax professionals. The primary benefit is accelerating resolution times by offering an alternative to more conventional communications such as in-person appointments, mailing, faxing and phone calls. An online account, similar to an online bank account would allow individual and business taxpayers, as well as duly authorized tax professionals, to conduct various transactions digitally with the IRS. A national survey by the American Bankers Association<sup>70</sup> reports that 71% of U.S. consumers prefer to bank using apps on their electronic devices. One of the most significant benefits of this type of secure communication is the assurance that taxpayers or professionals are indeed communicating with the IRS, especially considering the prevalence of scams each year targeting taxpayers.

While the NTA report commends the IRS for progress made to date, it also highlights that online accounts still lack many features and functions that could and

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<sup>68</sup> IR-2024-07 (Jan. 10, 2024), National Taxpayer Advocate delivers Annual Report to Congress; focuses on taxpayer impact of paper processing delays; <https://www.irs.gov/newsroom/national-taxpayer-advocate-delivers-annual-report-to-congress-focuses-on-taxpayer-impact-of-paper-processing-delays>.

<sup>69</sup> National Taxpayer Advocate 2023 Annual Report to Congress, *supra*.

<sup>70</sup> National Survey: Bank Customers Use Mobile Apps More Than Any Other Channel to Manage Their Accounts; <https://www.aba.com/about-us/press-room/press-releases/consumer-survey-banking-methods-2023>.

should be implemented to make these accounts increasingly more attractive, thereby driving higher adoption rates.

The NTA also notes in its 2023 Annual Report: “During 2023, individual taxpayers filed more than 160 million income tax returns, yet only 16.8 million users accessed individual online accounts.” The report goes on to suggest that in addition to functionality advancements, the IRS needs to step up efforts to promote taxpayer accounts. To date, the IRS has generally limited its efforts to social media<sup>71</sup> and messaging at its Nationwide Tax Forums<sup>72</sup> as well as during the filing season at its Voluntary Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) sites.

The IRSAC agrees with the NTA’s recommendation and further notes that the IRS Restructuring and Reform Act of 1998 (P.L. 105-206 (July 22, 1998)) has a provision that reads: “The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.” Here “The Secretary” refers to the Secretary of the Treasury. This provision grants considerable flexibility encouraging the use of electronic tax administration programs. The IRS, through the Secretary, has the authority to do so, and funding is available through The Inflation Reduction Act of 2022. Online Tax Accounts (whether for individual taxpayers, business taxpayers or tax professionals) qualify as an electronic tax administration program. The IRS needs to expand its promotional efforts.

By way of example, back in the late 1990’s, when this authorization was granted, the IRS invested in prime-time television advertising promoting the benefits of electronic filing of tax returns and electronic filing. The IRS also established an IRS *e-file* Provider Program. Other examples can be found in *A Model for Increasing Innovation Adoption: Lessons Learned from the IRS e-file*

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<sup>71</sup> Such as on LinkedIn at <https://www.linkedin.com/company/irs/>.

<sup>72</sup> Forum details available at <https://www.irs.gov/tax-professionals/irs-nationwide-tax-forum-information>.

*Program.*<sup>73</sup> With this authority it also brokered the credit card payment of taxes and electronic filing began to grow as awareness grew.

### **Recommendations**

The IRSAC recommend that to increase adoption of the various online accounts enabled by the IRS should develop and implement a marketing plan focused on making taxpayers and tax professionals aware of the availability and advantages of online accounts. Examples of approaches to increase awareness and adoption of online accounts include:

1. Active promotion – direct mail, radio or television advertising including its current social media efforts.
2. Working with professionals and professional associations (providing a handout, tent cards or materials that can be printed and voluntarily distributed).
3. Provide reports to professionals on the number of their clients who have online accounts.
4. Add the requirement that tax professionals have a Tax Pro account to continue promoting themselves as Authorized IRS e-file Providers.
5. Run a promotion with tax preparers – for example, offering discounted admission to an IRS Nationwide Tax Forum if the preparer signs up a certain number of clients as online account holders.
6. Offer discounts on an IRS Nationwide Tax Forum registration fee if the tax professional has a Tax Pro account.

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<sup>73</sup> A Model for Increasing Innovation Adoption: Lessons Learned from the IRS e-file Program, 2006; <https://www.businessofgovernment.org/report/model-increasing-innovation-adoption-lessons-learned-irs-e-file-program>.

## **ISSUE SIX: Online Accounts Technical Support**

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**SOP Mapping:** 1.2, 1.4, 1.6, 1.8, 1.10, 1.11, 1.12, Objective 4.

### **Executive Summary**

Among the IRS's many commitments to modernization, several self-service tools are key: the Individual Online Account (IOLA),<sup>74</sup> the Business Tax Account (BTA),<sup>75</sup> and the Tax Pro Account.<sup>76</sup>

The feature-set for each of these online accounts is planned by the IRS to continue to evolve over time, enabling the rollout of new features in phases. For these self-service tools to be widely adopted, in alignment with industry best practices, these online accounts should have various tiers of readily available customer service and multiple types of technical support to assure the user receives help in using the tools.

### **Background**

The IRS IRA Strategic Operating Plan Annual Update Supplement<sup>77</sup> describes priority efforts the IRS will undertake in 2024 and 2025 to make most required interactions available through online accounts. However, one capability the IRS Strategic Operating Plan does not address is making technical support available for these various online accounts. In discussions with IRS leadership, the IRS acknowledged that their roadmap for future features doesn't presently include any significant efforts to address technical support as a needed capability.

In the private sector, businesses offer various levels of support to their customers' usage of digital products and services. Examples include:

1. Searchable knowledge base of articles, user guides and product documentation.
2. Frequently Asked Questions (FAQs).

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<sup>74</sup> Login available at <https://www.irs.gov/payments/online-account-for-individuals>.

<sup>75</sup> Login available at <https://www.irs.gov/businesses/business-tax-account>.

<sup>76</sup> Login available at <https://www.irs.gov/tax-professionals/tax-pro-account>.

<sup>77</sup> IRS 2024 IRA Strategic Operating Plan Annual Update Supplement, pp. 14 to 15 at <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>.

3. Tutorials and interactive how-to guides including webinars and live demos.
4. Automated support such as chatbots.
5. Live support through a help desk such as chat and phone assistance tiered based upon the complexity of the issue (Tier 1, Tier 2 and Tier 3).
6. Built-in feedback forms.
7. Periodic user experience and customer satisfaction surveys.
8. Proactive outreach on system outages with estimated times to recover. This is critical so the customer can balance urgency with return to service timing.
9. Proactive outreach contacting users who may be experiencing difficulties based on usage patterns, analytics or known issues.
10. Regular updates and communication informing users about upcoming updates, and known issues through newsletters, text messages or in-app notifications.

IRS Commissioner Werfel has frequently cited his commitment to benchmarking the IRS against the best in the private sector. This commitment should not only encompass digital functionality and generalized customer service and support, but also technical support in the use of its more critical public facing applications. In fact, the IRS had the foresight to enable technical support via chat for its IRS Direct File Program<sup>78</sup> launched in 2023, realizing that taxpayers may encounter experiences they do not understand, and absent help may abandon the application.

Various IRSAC members, and the constituents they represent, who have acquired online accounts, have encountered issues which could and should have been addressed with one or more of the commonly used private sector's best practices. These issues included system outages (sometimes these outages existed for weeks at a time) or HTTP Error 503 (this means that a server is unable to fulfill a request at that moment due to temporary overloading or maintenance of the server). Releasing customer-facing technology online without technical support

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<sup>78</sup> IRS Direct File news at <https://www.irs.gov/about-irs/strategic-plan/irs-direct-file-news>.

can pose several key risks. The most notable risk is customer frustration and a poor user experience that could lead to abandonment. As the old saying goes, “You only get one chance to make a first impression.” If the tools aren’t working reliably, tax professionals and individuals will revert to legacy solutions, including paper-based processes, that hinder the intended efficiencies promised with digital tools. Additionally, the potential negative word-of-mouth publicity might very well steer other potential users away from even giving online accounts a first-time try. The latter is even more pronounced when the user is a tax professional who has influence over their client base.

### **Recommendations**

To improve adoption and continued use of the various online accounts enabled by the IRS, the IRSAC recommends the following.

1. Add features and capabilities to the IRS Online Accounts roadmap that reflect industry best practices in customer service and technical support, many of which are noted in this report.
2. Allocate funding for online account technical support staffing as warranted, accounting for growth in account usage and as functionality increases.



## **ISSUE SEVEN: Capabilities for Business Online Tax Accounts**

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**SOP Mapping:** 1.2, 1.4, 1.6, 1.8, 1.10, 1.11, 1.12, Objective 4.

### **Executive Summary**

In implementing and expanding the functionality of business online tax accounts (“BTAs”), the IRS should prioritize functionality and features that entity taxpayers find most helpful and that will enable businesses to engage with the IRS in a digital manner rather than also having to rely on postal mail and phone calls for certain interactions. Current implementation plans might not fully consider all of the functions IRSAC members suggest in this report. We offer these suggestions to help ensure a broad list of functions IRSAC members would find beneficial based on their collective experiences working with many types of businesses, and we categorize them by priority level.

While the IRS will need to balance these taxpayer preferences with other considerations, such as legal, operational and technical constraints, it is important that the IRS properly account for these preferences and pursue methods that can enable broad digital interaction of taxpayers and the IRS. We acknowledge that these pursuits may involve a need to suggest statutory changes to Congress and added security measures (see further discussion in General Issue Two on SOP Assessment and Analysis).

Ongoing modernization efforts, enriched by additional funding from the Inflation Reduction Act of 2022 (IRA),<sup>79</sup> have enabled the IRS to make tremendous progress on building ways for the IRS and taxpayers to interact more effectively using digital tools and processes. We commend the IRS for these efforts that are ongoing. Given the diverse practice experiences of the IRSAC members, we offer suggestions and prioritization for additional functionality that we believe will help the IRS achieve its modernization goals, improve efficiency of taxpayer/IRS interactions, and enable taxpayers to interact with the IRS completely in a digital manner.

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<sup>79</sup> P.L. 117-169 (Aug. 16, 2022).

## **Background**

As of August 2024, C corporations, trusts, estates, limited liability companies or certain other entities, are not able to access their BTA. The current BTA that a sole proprietorship, and owners of partnerships and S corporations can access have limited functionality although the IRS Strategic Operating Plan (“SOP”) and various IRS news releases indicate additional functions to be added.<sup>80</sup> The IRS has stated that BTAs will eventually “be a one-stop application that provides business taxpayers a suite of digital products and services, including access to viewing letters or notices, requesting tax transcripts, adding third parties for power of attorney or tax information authorization, and storing bank account information to manage tax payments. It will help users manage their tax obligations, reducing the burden on taxpayers who would otherwise need to call or mail the IRS.”<sup>81</sup>

Further, the SOP describes how the IRS plans to use funding from the IRA to improve customer service and other priorities. The SOP states that the IRS will “build Business Online Accounts and enable business taxpayers to manage who can access company information and act on the entity’s behalf while offering a modern suite of self-service options.”<sup>82</sup> The SOP states a “future state” should exist where, “taxpayers can complete all interactions with IRS online if they choose and see comprehensive up to date info on tax status.”<sup>83</sup>

In designing BTA capabilities and determining which features and functions to prioritize the IRS should appropriately consider and reflect the preferences

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<sup>80</sup> IR-2024-196 (July 25, 2024), IRS continues to expand taxpayer services and online tools, key milestones reached with Inflation Reduction Act funding; <https://www.irs.gov/newsroom/irs-continues-to-expand-taxpayer-services-and-online-tools-key-milestones-reached-with-inflation-reduction-act-funding>.

<sup>81</sup> IR-2023-243 (Dec. 18, 2023), Transformation work continues: IRS expands business tax account access to S corporations, partnerships; adds ability to view business tax transcripts; <https://www.irs.gov/newsroom/transformation-work-continues-irs-expands-business-tax-account-access-to-s-corporations-partnerships-adds-ability-to-view-business-tax-transcripts>.

<sup>82</sup> IRA Strategic Operating Plan, Initiative 1.4 (improve self-service options), page 26; <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

<sup>83</sup> IRA Strategic Operating Plan, 2024 Annual Update Supplement, page 10; <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>.

identified below that are based on the diverse practice experiences of IRSAC members.

### **Recommendations**

The IRSAC believes that businesses have the following priorities (presented in random order within each prioritization category) for implementation in the BTAs.

#### *Top Priority*

- 1) *Manage and update addresses, communication preferences and contact information* – ideally taxpayers could list separate addresses and contacts for income tax, payroll/employment tax and other tax purposes.
- 2) *Manage authorized representatives* – taxpayers may wish to have different contacts for different tax issues, which should be appropriately reflected in the BTAs.
- 3) *Manage powers of attorney.*
- 4) *File Form 8832 (Entity Classification Election).*
- 5) *File Form 2553 (Election by a Small Business Corporation).*
- 6) *File Form 8802 (Application for United States Residency Certification).*
- 7) *File Form 8288-B (Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests).*
- 8) *Manage direct deposit/bank information.*
- 9) *View Information Returns filed by third parties* (e.g., Forms 1099, 1042) – ideally, this information could be presented in both summary form and by individual information return received (with redactions of identifying information of other parties).
- 10) *View and obtain tax transcripts.*

#### *High Priority*

- 1) *Pay a bill or estimated taxes* – While this can be through other IRS portals, the IRSAC believes that BTAs should be a “one stop shop” for businesses to transaction with the IRS.
- 2) *View tax payments and amounts due.*

- 3) *Reapply payments, including the ability to reapply payments such as Form 941 payments (employment tax) to different periods and the ability to reapply payments to different tax types such as moving payments applied to Form 941 to Form 945 (nonwage tax).*
- 4) *View a taxpayer's EIN confirmation letter.*
- 5) *View communication sent from the IRS (including mail and electronic notices).<sup>84</sup>*
- 6) *Manage IRS Information Document Requests ("IDRs") and other IRS informational requests, including the ability to respond to IDRs, view deadlines and track previous communications by date and parties.*
- 7) *Check the status of a previously filed form or request.*

*Medium Priority*

- 1) *View summary tax information, which would include summary income, deduction, payroll information, credit information and tax paid.*
- 2) *Upload (and/or modify) informational reports (Forms 1099, 1042, etc.).*
- 3) *View tax filings and balance confirmation.*
- 4) *File and view status of penalty abatement request.*
- 5) *Set automatic reminders for important tax due dates.*
- 6) *Revoke previous S corporation election.*
- 7) *Upload .pdf versions of mandatory paper income tax returns (although the IRSAC also suggests that all forms be allowed to be e-filed).*
- 8) *Submit supporting documents, including e-storage of pertinent documentation.*
- 9) *Submit supplement tax return information where upload of tax backup documentation not supported by e-file software.*

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<sup>84</sup> IRSAC recommends that the IRS permit taxpayers to elect to be notified via email of an IRS communication posted to the BTA with "time sensitive" included in the subject line where applicable. Ideally, taxpayers would have as much discretion as possible as to which email address would be notified of a particular communication, which might result in notifications with respect to different subject matter (e.g., income tax, payroll tax, excise tax.) being sent to different email addresses.

- 10) *Confirm payroll information (with redactions of identifying information of other parties) -- Taxpayers have encountered difficulties where payroll is reported under another EIN.*
- 11) *File for an extension for income tax returns or informational returns.*
- 12) *Update tax matters partner information.*
- 13) *Send a message to the IRS and maintain a log of these messages and responses including dates.*
- 14) *Track taxpayer and IRS activity in resolving identity theft matters, including dates and IRS personnel and contact information who are working on this matter.*
- 15) *File Form 966 (Corporate Dissolution or Liquidation).*
- 16) *File Form 56 (Notice Concerning Fiduciary Relationship).*
- 17) *File Form 5495 (Request for Discharge From Personal Liability Under Section 2204 or 6905).*
- 18) *File Form 3115 (Application for Change in Accounting Method) – the online account should allow for submission of this form for both automatic and non-automatic changes (although for automatic method changes the form should also be attached to the income tax return for the year of change).*
- 19) *View communication log of contact with IRS, including list of dates the taxpayer and IRS spoke over the phone.*
- 20) *Obtain an estate tax closing letter (in lieu of the current process for transcripts or the user fee).*
- 21) *Manage energy credits, including links to access other IRS portals to manage energy credits.*
- 22) *File Form 4810 (Request for Prompt Assessment Under IRC Section 6501(d)).*
- 23) *File Form 433-B (Collection Information Statement for Businesses).*
- 24) *Allow filing and IRS acknowledgement and response to requests that must be made separately from a tax return, such as for the request for additional time to replace property that was damaged or condemned (Treas. Reg. § 1.1033(a)-2(c)(3)).*

*Low Priority (but still important)*

- 1) *Consolidation with other types of electronic online accounts (e.g., tax pro accounts).*
- 2) *FinCen Corporation Transparency Act (CTA) and FBAR reporting, or at least link and sign in to the taxpayer's FinCEN account to file or update CTA reports and FBARs.*
- 3) *Change of Responsible Party.*
- 4) *Deduction and tax credit finder – to provide information to businesses on significant and changed deductions and tax credits with links to additional information.*
- 5) *Form W-9 generator – The form would autocomplete known fields based on information retained in the BTA and would allow for e-sign by authorized personnel.*
- 6) *Change/update entity names.*
- 7) *View your complete previously-filed returns.*
- 8) *Request a settlement agreement/offer in compromise.*
- 9) *Request tailored help/support on a substantive tax issue.*
- 10) *File Form 911 (Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)).*
- 11) *Submit and manage ruling requests, including PLRs and Forms 1128.*
- 12) *Filing of various tax forms (Forms 8806, 8842, 8849, 8876, etc.).*

## **ISSUE EIGHT: Authorization Techniques to Enable Businesses to Utilize Online Accounts**

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**SOP Mapping:** 1.2, 1.4, 1.6, 1.8, 1.10, 1.11, 1.12, Objective 4.

### **Executive Summary**

The IRSAC understands that the IRS is currently considering which individuals will be authorized to access and utilize Business Tax Accounts (“BTAs”) on behalf of an entity, and what those authorized persons will be able to do once authenticated. We also understand that this is a challenging matter beyond what many businesses face in providing online accounts to customers due to statutory constraints and the massive amount of confidential data that the IRS maintains.

In general, to the extent possible,<sup>85</sup> the IRS should defer to taxpayers in determining who is authorized to access and utilize business accounts. Similarly, the IRS should defer to taxpayers to the extent possible in determining the actions an authorized individual may take on behalf of an entity taxpayer through a BTA.

### **Background**

BTAs are a key component of modernization of the IRS and the IRS Strategic Operating Plan (“SOP”). The IRS has stated, “[o]ver time, business tax account will be a one-stop application that provides business taxpayers a suite of digital products and services, including access to viewing letters or notices, requesting tax transcripts, adding third parties for power of attorney or tax information authorization, and storing bank account information to manage tax payments”.<sup>86</sup> The SOP describes how the agency plans to use funding from IRA to improve customer service and other priorities. The SOP states a “future state” should exist where, “[t]axpayers can complete all interactions with the IRS online if they choose and see comprehensive up to date info on tax status.”<sup>87</sup> Online

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<sup>85</sup> Various legal and other factors may affect BTA design and usage such as Section 6103, Confidentiality and disclosure of returns and return information.

<sup>86</sup> IR-2023-243 (Dec. 18, 2023); <https://www.irs.gov/newsroom/transformation-work-continues-irs-expands-business-tax-account-access-to-s-corporations-partnerships-adds-ability-to-view-business-tax-transcripts>.

<sup>87</sup> See IRS IRA Strategic Operating Plan, 2024 Annual Update Supplement, page 10; <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>.

accounts and services are part of SOP objectives one on taxpayer services, two on resolving taxpayer issues, and four on use of cutting-edge technology. As of the date of drafting, BTAs are available only for partnerships, S corporations, and sole proprietorships and functionality is limited.<sup>88</sup> The IRS has stated, however, that other roles and entity types (c-corporations, limited liability companies (LLC), tax exempt, government entities, etc.) will be included in future enhancements.<sup>89</sup> Multiple countries and U.S. states already offer online accounts with significant functionality.<sup>90</sup>

*Who is authorized to access and utilize BTAs on behalf of an entity*

For each type of entity, authorizing the same individual(s) who are authorized to sign the income tax return for the entity (or would be so authorized if the entity filed an income tax return) to act as the initial “designated official” (“DO”) for the entity with full authority to access the BTA and authorize other DOs or “designated users” (“DUs”) would create a familiar and commercially practicable standard.<sup>91</sup> DUs would be able to utilize only those individual functions granted to them by a DO.<sup>92</sup> Following the standard for who can sign the income tax return will create a familiar standard for taxpayers, allow all legal types of entities to utilize BTAs, and will allow entities the operational flexibility that is needed to make BTAs useful and successful. Requirements that are too restrictive will result in many entities not being able to utilize a BTA. By way of example, a requirement that the DO must, in all cases, be an employee of the entity (as determined for federal income tax purposes) will result in many, if not most, large businesses being

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<sup>88</sup> IRS, Business tax account; <https://www.irs.gov/businesses/business-tax-account>.

<sup>89</sup> See pages 1-2, <https://www.irs.gov/pub/foia/ig/wi/wi-21-1223-1164.pdf>.

<sup>90</sup> For example, the United Kingdom (<https://www.gov.uk/guidance/sign-in-to-your-hmrc-business-tax-account>), Canada (<https://www.canada.ca/en/revenue-agency/services/e-services/digital-services-businesses/business-account.html>), Netherlands (<https://mijnzakelijk.belastingdienst.nl/GTService/>), New York (<https://www.tax.ny.gov/e-services/otc/busverification.htm>), California (<https://www.ftb.ca.gov/myftb/create-an-account.html>).

<sup>91</sup> The IRS should highlight to entities that they should consider having multiple DOs to account for the potential death or disassociation of the initial DO with the entity.

<sup>92</sup> If, for whatever reason, the IRS is not able to accept the IRSAC’s suggestion that the individual(s) permitted to sign the income tax return should be authorized to act as the initial DO, the IRS should consider alternative solutions that would permit an individual to act as a DO with respect to certain non-fraud sensitive tasks. This will permit entities to have significant BTA functionality where it might otherwise have none. See discussion below under the subheading, “*What functions can a DO or DU perform with respect to a BTA*”.



unable to utilize BTAs, as it is common for the entity that acts as the employer to be a disregarded or consolidated subsidiary of the taxpayer parent. Similarly, a requirement that the DO of a limited partnership must be an individual general partner would result in few partnerships being able to utilize BTAs, as general partners typically are entities, not individuals.

Further, entities often have different individuals that lead different tax functions within an organization. For example, payroll and associated tax functions may be managed by different individuals than those who typically handle income tax functions. Similarly, entities may run different tax functions through different offices with different addresses. Moreover, entities often outsource tax functions to third party providers, such as attorneys, CPA or payroll service providers.

Taxpayers and the IRS share legitimate concerns about fraud and misuse of BTAs.<sup>93</sup> Entities, however, are used to handling risks associated with authorizing individual actors to act on their behalf. Entities regularly deal with authorizing and deauthorizing individuals to act on its behalf in other contexts that generally invite a higher risk of abuse. For example, many entities authorize individuals who are not officers or owners to send bank wires or make withdrawals, or to sign major contracts on the entity's behalf. These entities already have existing procedures and safeguards in place that could easily be applied in a different context. Generally, it should be taxpayer group's obligation to ensure that an individual has the appropriate authority to act as DO on behalf of the entity. Moreover, there are less restrictive means to avoid fraud or misuse that do not require overly restricting the identity of the initial or subsequent DOs.

Independent verification by the IRS of the authorization of an individual identified as a DO and mandatory periodic revalidation of DOs and DUs would impose significant burdens on taxpayers and significantly reduce the net benefits

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<sup>93</sup> Individuals accessing online individual accounts and the limited functions currently associated with BTAs validate their identity using ID.me. See New identity verification process to access certain IRS online tools and services, FS-2021-15, November 17, 2021; <https://www.irs.gov/newsroom/new-identity-verification-process-to-access-certain-irs-online-tools-and-services>. The IRSAC is supportive of the IRS continuing to use ID.me as a means of identification going forward. Requiring that the individual be validated through ID.me reduces risk of fraud or misuse, protecting taxpayers and ensuring the integrity of BTAs.

of BTAs for many taxpayers. BTAs are optional and entities that elect to open and maintain BTAs have, by virtue of opening and maintaining those accounts, chosen to accept the burden of ensuring that the individual(s) who have previously been authorized remain so. Requiring independent validation of authority for the DO by the IRS would require that the IRS make legal judgments, dictated by state law that is fact specific and nuanced, while also imposing additional burdens on taxpayers. Further, the IRSAC does not see any reason why DOs or DUs should need to be periodically revalidated. As noted above, entities regularly monitor outstanding authorizations in other contexts.

More generally, the IRSAC does not understand why the standards for establishing authority would be so much higher for BTAs than for paper-filed actions, such as the filing of an income tax return,<sup>94</sup> particularly where an individual has authenticated their identity.<sup>95</sup>

Going forward, entities would find it most convenient if they could identify one or more DOs as part of the process of receiving an employer identification number (“EIN”) online. This would also minimize the possibility of bad actors attempting to add themselves as an entity’s DO, as all existing DOs of an entity would receive notification of such attempt.<sup>96</sup>

*What functions can a DO or DU perform with respect to a BTA*

The IRS should, wherever possible, provide as much functionality as possible to DOs (or DUs, if so designated by a DO). The IRSAC appreciates that this may mean that certain tasks could be performed by an individual, such as an employee who leads an entity’s tax functions, who does not have full authority to act for an entity with respect to other actions. These individuals, however, would have been legally authorized to take such actions by the initial DO through the

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<sup>94</sup> Concerns regarding fraud or abuse of a DO seem even less likely where the individual is a licensed attorney, CPA, enrolled agent, or other credentialed individual. If necessary, the IRS may wish to apply less restrictive standards for authenticating a DO with these types of statuses.

<sup>95</sup> To the IRSAC’s knowledge, there is no validation of a claim of power of attorney filed by paper with the IRS on a Form 2848 (Power of Attorney and Declaration of Representative) or of the authority of an individual who signs an entity’s tax return, nor is there is any verification of the person who mailed or signed the form.

<sup>96</sup> See discussion below under the subheading, “*What functions can a DO or DU perform with respect to a BTA*”.

grant of DO or DU status and the authorization by the initial DO to take such action from within the BTA. Further, while the IRSAC also appreciates the IRS's concerns regarding authorization, fraud and abuse, many of the desired features and functions of BTAs are not conducive to fraud and some of these functions are permitted to be performed outside a BTA by any duly authorized person selected by the entity.<sup>97</sup> For example, the IRSAC does not believe that a request for a Form 6166 (Certification of U.S. Tax Residency) is of a nature that is conducive to fraud and the Form 8802 filed to request a Form 6166 can generally be signed by any duly authorized person under state law.<sup>98</sup> If necessary to permit a DO to act where no DO would otherwise be authorized to act on behalf of an entity, the IRS should consider having "limited action DO", who is authorized to undertake limited actions, rather than an "all-or-nothing" approach that would otherwise cause an entity to be unable to utilize BTAs at all.

To minimize the risk of fraud or misuse, DOs (and, if authorized, DUs) should also be able to elect to receive emails and notifications to their Secure Object Repository (SOR) accounts if certain actions are taken through a BTA. Moreover, notifications of actions that are particularly conducive to fraud, such as changes to bank account details or addresses, should also be sent by mail to entities at their last listed address.

To allow entities the necessary flexibility, any DO should be entitled to remove another DO's authority. Further, any DO that is deauthorized by another DO should be informed via email and their SOR accounts. If the removed DO(s) challenges the authority for their removal, the functionality of the BTA will be on hold until such time an officer, general partner, trustee or sole owner, as the case may be, determines the appropriate identity of the DO(s).<sup>99</sup>

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<sup>97</sup> See General Issue Seven for a discussion of these desired functions and the IRSAC's recommended priority levels for these functions.

<sup>98</sup> See Instructions to Form 8802, Table 3; <https://www.irs.gov/pub/irs-pdf/i8802.pdf>. Note, in particular, that a Form 1120 must be signed by an officer, whereas the Form 8802 may be signed by any duly authorized individual.

<sup>99</sup> The IRSAC expects such circumstances will rarely arise.

## **Recommendations**

1. Authorize the same individual(s) who are authorized to sign the income tax return for any entity type (or would be so authorized if the entity filed an income tax return) to act as the initial “designated official” (“DO”) for the entity.
2. If Recommendation 1 is not adopted, ensure that the ultimate authorization approach does not restrict the authorized individuals such that, as a practical matter, an entity will be unable to utilize a BTA.
3. Simplify the process for identifying and authenticating the DO: Where an entity or one of its consolidated group members or wholly owned disregarded entities has employees who are authorized to sign the income tax return for the entity, the DO should be one of those employees and should be verified through payroll information on file with the IRS. In other cases, the IRSAC believes it is appropriate to have a two-step process to authenticate the initial DO:
  - 1) The DO, after authenticating with ID.me, would verify information from an income tax filing, such as the amount of adjusted gross income or estimated taxes paid from a previously filed income tax return by the entity (or its consolidated parent) and they certify that are authorized to sign the income tax return for the entity (or would be so authorized if the entity could file a separate income tax return); and
  - 2) If the DO verifies this information correctly, the IRS would then mail a “DO PIN” to the address on file from the last income tax return to entity.<sup>100</sup> The DO would have 30 days from the date that PIN is mailed to enter this PIN to verify their status before they could act as a DO for that entity.
4. Streamline the authorization process and consider the following:

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<sup>100</sup> For reference, California requires both a mailed PIN and verification of tax information to authenticate for their online business tax accounts; <https://www.ftb.ca.gov/myftb/create-an-account.html>.

- a. Update the process of receiving an EIN online to permit entities to identify one or more DOs in connection with receiving an EIN.
- b. Avoid any action to independently verify the authorization of an individual identified by an entity as a DO or DU by reviewing legal documents of the entity.
- c. Each DO should be provided full authority to take any action permitted on a BTA, including the ability to authorize or deauthorize other DOs or DUs.
- d. DOs should be able to authorize DUs to access information and/or take actions on an individual BTA function by function basis (i.e., for each action, a DO should be able to tick a box as to whether the DU can utilize that feature or, with respect to accessing information, access that information).
- e. Do not require periodic revalidation or reauthorization of a DO or DU. If the IRS determines it must do so, the revalidation or reauthorization should be as infrequent as possible and require a minimum amount of a DO's time.
- f. Minimize fraud or misuse by informing entities by mail, email and Secure Object Repository (SOR) of any major action taken on a BTA, including the addition or elimination of a DO or DU and any request or filing made through a BTA.
- g. Changes to fraud-sensitive items, such as the identification of a new DO, or changes to addresses or bank account details, should not take effect for three weeks (six weeks for entities with a foreign address) following the change in the BTA, allowing sufficient time to alert the entity of the change by mail and email.

## ISSUE NINE: Identity Theft Prevention and Resolution

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SOP Mapping: 4.4.

### **Executive Summary**

Tax-related identity theft and stolen identity refund fraud are constant, evolving threats to taxpayers, especially individuals who self-prepare their tax returns, and tax administration more generally.<sup>101</sup> According to the government's most recent statistics for 2023, it is estimated that more than 1 million taxpayers are victims of identity theft, requiring taxpayers and the IRS to spend significant taxpayer dollars and invest considerable resources to assist victims of identity theft and attempt to recover erroneous refunds.<sup>102</sup> The IRSAC asked to examine whether a more proactive data security policy, on-par with leading financial institutions, might better-position the IRS to systemically combat tax-related identity theft and stolen identity refund fraud.<sup>103</sup>

The IRSAC is also concerned by the IRS's delay in processing identity theft affidavits as well as the impact that high false identity theft detection rates can have on the amount of time it takes the IRS to issue refunds to entitled taxpayers, both of which the National Taxpayer Advocate (NTA) reported on in her 2023 Annual Report.<sup>104</sup> The IRSAC offered to comment on ways the IRS can more easily authenticate the filer's identity and clear the backlog of identity theft affidavits and

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<sup>101</sup> Tax-related identity theft and stolen identity refund fraud are distinct concepts that can, at times, overlap. In this regard: tax-related identity theft typically occurs when a person steals another person's personal information to commit tax fraud generally. See IRS, Identity Theft Central, <https://www.irs.gov/identity-theft-central#:~:text=Tax%2Drelated%20identity%20theft%20happens,claim%20a%20refund%20or%200credit> . (last updated Aug. 19, 2024). Stolen identity refund fraud, by contrast, occurs when a person files or attempts to file a fraudulent tax refund claim, using personal identification numbers that have been stolen or are otherwise being unlawfully obtained. See U.S. Dept. of Justice, *Justice Department Announces New Directive to Fight Stolen Identity Refund Fraud* (Sept. 18, 2012), <https://www.justice.gov/opa/pr/justice-department-announces-new-directive-fight-stolen-identity-refund-fraud>. One example of tax-related identity theft that does not necessarily constitute stolen identity refund fraud is a situation in which IRS records indicate that a person received wages from an unknown employer, in which case the person's Social Security number was likely used by someone else to obtain employment.

<sup>102</sup> Federal Trade Commission, *Consumer Sentinel Network: Data Book 2023*, p. 8 (Feb. 2024).

<sup>103</sup> The Electronic Tax Administration Advisory Committee (ETAAC) has made recommendations to the Congress and the IRS on identity theft in past reports. The IRSAC met with members of ETAAC in April 2024 to learn more about their work and what they had learned about this topic.

<sup>104</sup> See generally NTA, *2023 Annual Report to Congress*, pp. 78 to 86.

tax returns requiring authentication.

## **Background**

### *The IRS's Current Approach to Identity Theft*

The IRS uses a multi-faceted approach to combat (and assist victims of) tax-related identity theft and stolen identity refund fraud. These approaches include: education and outreach; the Security Summit; assignment of identity protection personal identification numbers (IP PINs); either rejection of tax returns determined to be fraudulent or referral of the tax return to authenticate the identity of the suspected filer; and the imposition of criminal (and possibly civil) penalties against suspected identity thieves. We discuss each of these approaches in turn.

*Education and Outreach:* The IRS educates the public about common scams fraudsters use to commit tax-related identity theft. The mediums through which the IRS communicates this information consist of a “landing page” on the IRS’s website (the Identity Theft Landing Page),<sup>105</sup> informational videos,<sup>106</sup> publications,<sup>107</sup> and news releases, including as part of the IRS’s “Dirty Dozen” awareness effort (the Dirty Dozen News Release).<sup>108</sup> The Dirty Dozen News Release contains detailed information about how to report unscrupulous tax return preparers, but the Identity Theft Landing Page does not. Furthermore, neither the Dirty Dozen News Release nor the Identity Theft Landing Page provide information about how to report suspected identity thieves to the IRS. Taxpayers are more likely to report tax-related identity theft to the IRS, and the IRS can act immediately against suspected identity thieves, if the IRS facilitates the easy reporting of alleged identity theft. The IRS has existing forms, such as Form 3949-A, Information Referral, that can be used for identity theft victims to report to the IRS

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<sup>105</sup> IRS, Identity Theft Central; <https://www.irs.gov/identity-theft-central> (last updated Aug. 19, 2024).

<sup>106</sup> *Id.*

<sup>107</sup> See, e.g., IRS, Pub. 5708, Creating a Written Information Security Plan for your Tax & Accounting Practice (rev. Aug. 2024); IRS, Pub. 4557, Safeguarding Taxpayer Data (rev. May 2024); IRS, Pub. 5293, Data Security Resource Guide for Tax Professionals (rev. May 2018).

<sup>108</sup> IRS, IR-2024-84 (Mar. 28, 2024), IRS kicks off annual Dirty Dozen with warning about phishing and smishing scams, <https://www.irs.gov/newsroom/irs-kicks-off-annual-dirty-dozen-with-warning-about-phishing-and-smishing-scams>. The IRS also trains customer service representatives on the full scope of identity theft.

alleged violations of the tax laws, including those concerning tax-related identity theft and stolen identity refund fraud.

*The Security Summit:* The IRS participates in the Security Summit, which is a unique public-private partnership created in 2015 in which the IRS, 42 state tax agencies, and 24 industry offices strengthen fraud defenses inside the tax system to protect against theft, including by educating taxpayers on security-related topics and sharing information about emerging fraud as well as cyber schemes.<sup>109</sup> Information is shared on the Information Sharing and Analysis Center (ISAC), which includes two components: an online platform operated by a trusted third party under the direction of the IRS to communicate information on suspected fraud, especially tax-related identity theft; and a collaborative organization governance structure consisting of the IRS, state tax agencies, and industry.<sup>110</sup> During 2023, the ISAC began evaluating the ability to use artificial intelligence (AI) to mitigate tax-related identity theft.<sup>111</sup>

*IP PINs:* The IRS issues an Identity Protection PIN (IP PIN) to actual or suspected victims of identity theft, as well as anyone who has a Social Security number or individual taxpayer identification number and requests an IP PIN, to offer an additional layer of protection.<sup>112</sup> An IP PIN is a six-digit number assigned to eligible taxpayers each year to help prevent the misuse of their taxpayer identification numbers on federal income tax returns.<sup>113</sup> The IP PIN acts as an authentication number that allows the IRS to validate the correct owner of the taxpayer identification number(s) listed on a taxpayer's tax return. The IP PIN may be issued to a primary taxpayer (*i.e.*, the person filing the tax return) or to a

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<sup>109</sup> IRS, IR-2023-147 (Aug. 15, 2023), Security Summit: IRS reminds tax pros to plan, protect, defend against identity theft; special summer series concludes with important reminders; <https://www.irs.gov/newsroom/security-summit-irs-reminds-tax-pros-to-plan-protect-defend-against-identity-theft-special-summer-series-concludes-with-important-reminders>; see also IRS, *Security Summit, Security Summit | Internal Revenue Service (irs.gov)* (last updated July 10, 2024).

<sup>110</sup> GAO, *Taxpayer Information: IRS Needs to Improve Oversight of Third-Party Cybersecurity Practices* (GAO-19-340 (May 9, 2019)).

<sup>111</sup> ISAC, *2023 Annual Report* p. 5.

<sup>112</sup> IRS, FAQs about the Identity Protection Personal Identification Number (IP PIN), Q&A-1, Q&A-2, <https://www.irs.gov/identity-theft-fraud-scams/frequently-asked-questions-about-the-identity-protection-personal-identification-number-ip-pin> (last updated May 20, 2024).

<sup>113</sup> IRS, Get An Identity Protection PIN (IP PIN); <https://www.irs.gov/identity-theft-fraud-scams/get-an-identity-protection-pin> (last updated Aug. 8, 2024).



secondary taxpayer, such as a spouse or dependent.<sup>114</sup> As demonstrated in the following chart, the total number of IP PINs issued by the IRS has risen dramatically in recent years:

IP PINs Generated					
<u>FS 2019</u>	<u>FS 2020</u>	<u>FS 2021</u>	<u>FS 2022</u>	<u>FS 2023</u>	<u>FS 2024</u>
4.0M	4.5M	4.8M	6.1M	8.1M	10.4M

The significant rise in IP PINs being generated over the past five fiscal years suggests that the IRS’s approach of making it easier for taxpayers to opt into the IP PIN program has been effective. On this point, taxpayers can opt into the IP PIN program through the following three methods: (1) online from mid-January through mid-November; (2) by filing Form 15227, *Application for an IP PIN*; and (3) in-person at a Taxpayer Assistance Center.

*Rejection of Tax Returns and Authentication:* For a tax return that is suspected to be fraudulent, the IRS either rejects the tax return as fraudulent or refers the tax return to authenticate the identity of the suspected filer. In our meeting with subject matter experts (SMEs) concerning identity theft, we learned that, during calendar year 2023:

- The IRS rejected over 2.66 million tax returns suspected as fraudulent;
- The IRS flagged 3.731 million tax returns as potentially fraudulent;<sup>115</sup> and
- Of the tax returns flagged, 1.795 million (or 48.2%) of these tax returns were ultimately determined not to be fraudulent.

We also learned that, during the 2023 calendar year, the IRS sought to authenticate over 1.9 million tax returns.<sup>116</sup> The NTA has reported that, once the tax return is selected for authentication and that decision is communicated to taxpayers, less than 50% of taxpayers responded to the IRS’s requests to

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<sup>114</sup> *Id.*

<sup>115</sup> This includes tax returns electronically filed by professionals (1.15 million), tax returns self-prepared and electronically filed by taxpayers (1.74 million), and tax returns self-prepared and filed on paper by taxpayers (841,000).

<sup>116</sup> This includes tax returns electronically filed by professionals (334,000), tax returns self-prepared and electronically filed by taxpayers (1.06 million), and tax returns self-prepared and filed on paper by taxpayers (540,000).

authenticate their identity.<sup>117</sup>

*Fraudulent refund prevention:* Federal law requires that accounts receiving federal payments be held in the recipient's name<sup>118</sup> and the instructions to Form 1040 advise taxpayers of this rule.<sup>119</sup> If the IRS directs a tax refund to a bank account that is not owned by a taxpayer, the financial institution may post the deposit even though the names do not match. To minimize fraud, a maximum of three tax refunds may be made to one financial account or prepaid card.<sup>120</sup> Nacha, an organization that develops ACH operating rules, developed an opt-in program as an avenue for financial institutions to return suspected fraudulent federal<sup>121</sup> and state<sup>122</sup> tax refunds with a specific reason code. Financial institutions that suspect fraud may also email the IRS external leads program.<sup>123</sup> The IRS meets regularly with the Department of Treasury Bureau of Fiscal Service, the Network Branded Prepaid Card Association, and prepaid card providers to find ways to prevent and identify fraudulent refunds deposited into prepaid card accounts.<sup>124</sup> The IRS receives additional identifying information about tax refunds made in connection with financial products<sup>125</sup> including the deposit information for the financial institution (*i.e.*, the bank's routing number) as well as the bank account number with respect to which the refund is to be deposited. While these strategies significantly reduce fraud, fraudsters are persistent and new strategies for screening tax refund deposits should be explored.

*Enforcement:* Finally, the IRS pursues enforcement against suspected

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<sup>117</sup> See NTA, posting of *Where's My Refund? Has Your Tax Return Been Flagged for Possible Identity Theft?* to the NTA Blog (Aug. 24, 2023).

<sup>118</sup> 31 U.S.C. 210.5(a); <https://www.ecfr.gov/current/title-31/subtitle-B/chapter-II/subchapter-A/part-210>.

<sup>119</sup> Form 1040 Instructions, pg. 59; <https://www.irs.gov/pub/irs-pdf/i1040gi.pdf>.

<sup>120</sup> Direct deposit limits; <https://www.irs.gov/refunds/direct-deposit-limits>.

<sup>121</sup> IRS REFUND RETURN OPT-IN PROGRAM AGREEMENT AND OPERATING RULES; <https://www.nacha.org/system/files/2024-08/IRS%20Refund%20Return%20Opt-In%20Program%20Rules%20and%20Agreement%208%207%2024.pdf>.

<sup>122</sup> STATE TAX REFUND RETURN OPT-IN PROGRAM; <https://www.nacha.org/system/files/2024-08/State-Tax-Program-Agreement-ODFI-2-21-24.pdf>.

<sup>123</sup> IRM 25.25.8.1.7 (11-13-2020); [https://www.irs.gov/irm/part25/irm\\_25-025-008r#idm140631310229696](https://www.irs.gov/irm/part25/irm_25-025-008r#idm140631310229696).

<sup>124</sup> Tax Refund Frequently Asked Questions; <https://www.fiscal.treasury.gov/eft/faq-tax-refund.html>.

<sup>125</sup> IRM 21.4.1.5.7 (03-15-2024); [https://www.irs.gov/irm/part21/irm\\_21-004-001r#idm139680614566480](https://www.irs.gov/irm/part21/irm_21-004-001r#idm139680614566480).

identity thieves through levying criminal (and potentially other) penalties. For example, during the 2023 fiscal year, an employee with the New Mexico Taxation and Revenue Department was sentenced to 94 months for an elaborate scheme to fraudulently alter tax refunds and direct more than \$1.2 million to bank accounts he controlled.<sup>126</sup> Moreover, Section 6713(b) authorizes the IRS to impose a \$1,000 penalty for each improper disclosure or use of tax return information that is used in connection with a crime involving identity theft, not to exceed \$50,000 per year. The IRS's annual Data Book does not contain detailed information about the assessment and abatement of, among other types of penalties, penalties arising under Section 6713.

### *Industry's Approaches to Identity Theft*

Commissioner Werfel has said the IRS should deliver a taxpayer experience that “mirrors what best-in-class public and private organizations now provide.”<sup>127</sup> This approach makes particularly good sense as it relates to combatting tax-related identity theft and stolen identity return fraud because financial services organizations are typically the leaders when it comes to cybersecurity. We surveyed the approaches being used by industry and other government organizations as it relates to identity theft. A summary of our research, directed to areas where the IRS may not be keeping pace with industry, is:

- Many public and private organizations, including some state tax agencies (like the California Franchise Tax Board), have tried to stifle identity thieves by reducing paper communication and requiring multi-factor authentication (MFA) for electronic communication. We believe the IRS's push to electronic communications, as discussed elsewhere in this report, will help reduce identity theft.
- Certain financial institutions are required by law to develop and implement a written identity theft prevention program designed to detect,

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<sup>126</sup> IRS:CI, *2023 Annual Report*, p. 29 (2023).

<sup>127</sup> *The Filing Season and the IRS Budget: Hearing Before the Senate Finance Committee* (Apr. 19, 2023) (written testimony of IRS Commissioner Daniel Werfel); <https://www.finance.senate.gov/imo/media/doc/2023%20FINAL%20CIR%20testimony%20SFC%20Filing%20Season%20041923.pdf>.

prevent, and mitigate identity theft in connection with opening new accounts and operating existing accounts.<sup>128</sup> While the IRS is not a financial institution subject to this law, the IRS opens and maintains tax accounts for all taxpayers and these taxpayers have a vested interest in identity theft prevention. The IRS has a comprehensive and multi-prong written strategy and risk assessment to detect, prevent, and remediate identity theft. However, due to the sensitive nature of the information contained in that document, a copy of it could not be shared with the members of the IRSAC.

- According to a 2021 study by Cisco, the use of MFA has increased considerably in recent years, reaching 79% in 2021, as compared to 53% in 2019 and 28% in 2017.<sup>129</sup> The IRS requires MFA for access to taxpayer information by partner government agencies,<sup>130</sup> and the Federal Trade Commission's (FTC) rules requires tax professionals and tax software companies to protect client data.<sup>131</sup> Although MFA is required for access to accounts used to e-file self-prepared tax returns, this is limited to verifying the ownership of the tax software account itself, and is not connected to the taxpayer's IRS Online Account or real-life identity. The e-file acceptance itself relies on knowledge of the taxpayer's prior-year adjusted gross income to confirm identity.<sup>132</sup> Although tax preparers and taxpayers are required to use IRS Online Accounts (validated to an Identity Assurance Level 2 (IAL2)) for access

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<sup>128</sup> Fair and Accurate Credit Transactions Act. P. L. 108-159, 117 (codified as amended at various sections of Title 15 of the U.S. Code).

<sup>129</sup> Cisco, Posting of *2FA Climbs, While Password Managers and Biometrics Trend* to the Duo.com Blog (Sept. 14 2021); <https://duo.com/blog/the-2021-state-of-the-auth-report-2fa-climbs-password-managers-biometrics-trend>.

<sup>130</sup> IRS, Multi-factor Authentication Implementation, (July 12, 2024); <https://www.irs.gov/privacy-disclosure/multi-factor-authentication-implementation>.

<sup>131</sup> This is required under FTC Safeguards Rule Part 314, (16 C.F.R).

<sup>132</sup> Pub. 1345, Authorized IRS e-file Providers of Individual Income Tax Returns, pg. 4 ("At a minimum, providers must require taxpayer's who have established an online account to validate access to a second factor (email, phone or other secure authenticator) before being permitted to electronically transmit their tax return to the IRS.").

to tax transcripts online,<sup>133</sup> the tax return filing process itself does not use the same identity verification process.

### *Reducing the Identity Theft Backlog*

The IRSAC is also concerned by the IRS's delay in processing identity theft affidavits as well as the impact that high false identity theft detection rates can have on the amount of time it takes the IRS to issue refunds to entitled taxpayers, both of which the NTA reported on in her 2023 Annual Report to Congress and experienced by the clients of some of IRSAC's members.<sup>134</sup> The NTA reports that it takes the IRS approximately 19 months to process identity theft affidavits.<sup>135</sup> The NTA also reports that the IRS has a false identity theft detection rate of 54%.<sup>136</sup> During our meeting with SMEs, we learned that the IRS is taking steps to address the backlog of identity theft affidavits, including: (1) allocating funding for overtime to increase the number of case resolutions; and (2) evaluating whether certain cases can be closed systemically and closing appropriate cases. In September 2024, we learned the IRS had begun training additional staff, including Customer Service Representatives, to work on case resolution and plans to train additional volunteers from Accounts Management (AM) during the fall of 2024. We applaud the IRS's efforts to prioritize providing help to taxpayers who experienced identity theft while recognizing the underlying factors contributing to the backlog continue to exist and should be addressed.

### **Recommendations**

We commend the IRS for its efforts to combat and assist victims of tax-related identity theft and stolen identity refund fraud. We recognize that the challenges presented by identity thieves are difficult and not easily resolved. We believe that more can be done as it relates to assisting victims of identity theft and

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<sup>133</sup> IAL2 is one of the three levels defined in the standards of the National Institute of Standards and Technology (NIST) and is not specific to ID.me or vendors. See *a/so* NIST Special Publication 800-63A, Digital Identity Guidelines Enrollment and Identity Proofing Requirements, at <https://pages.nist.gov/800-63-3/sp800-63a.html#sec4>.

<sup>134</sup> See *generally* NTA, *2023 Annual Report to Congress*, pp. 78 to 86.

<sup>135</sup> *Id.* at pp. 78 to 79.

<sup>136</sup> *Id.* at pp. 81 to 82.

adopting a more proactive data security policy, on-par with leading financial institutions, as described below.

- a. Improvements to Combat Tax-Related Identity Theft and Return Fraud
  - a. Ensure that the IRS's written identity theft plan is on par with (or exceeds) the plans adopted by certain financial institutions required by law to keep such a plan and, in connection therewith, publish the research and analysis supporting the apparent conclusion that the IRS's specific implementation of IAL2 would allow the IRS to offer similar data security features to that offered by industry as it relates to identity assurance, authentication, detecting compromised account, etc.
  - b. Use the existing IAL2-verified IRS Online Account to authenticate self-prepared electronically filed tax returns. This is already part of Direct File and should be extended to third-party tax software through an API or token that links the transmitted return with the IRS Online Account, to reduce tax-related identity theft and stolen identity refund fraud.
  - c. To thwart unscrupulous tax return preparers' attempts to electronically file tax returns without a PTIN and EFIN, which hampers detection of identity theft and fraudulent returns, partner with the tax software industry to mark returns suspected of being prepared by a paid preparer and falsely submitted as self-prepared returns using consumer tax software.
  - d. Develop additional methods of screening tax refund deposits in order to increase fraudulent refund detection.
- b. Improvements to Assist Victims of Tax-Related Identity Theft and Return Fraud
  - a. Update the Identity Theft Landing Page to include information about reporting unscrupulous tax return preparers and/or suspected identity thieves to the appropriate operating divisions within the IRS (*i.e.*, IRS Criminal Investigation, the Office of Professional

Responsibility, or the IRS Whistleblower Office). For example, the IRS might include on the Identity Theft Landing Page a link to Form 3949-A, which could be used to allow identity theft victims to provide information to the IRS about suspected identity thieves.

- b. Assess appropriate civil and criminal penalties against those determined to have committed identity theft; and report these results in the annual IRS Data Book.
- c. Clear the backlog and prevent future backlogs of tax-related identity theft affidavits by (1) assigning a dedicated detail immediately to work on ID theft affidavits until the backlog is cleared, (2) immediately assigning an IP PIN and flagging pending tax returns as suspected of identity theft upon receipt of an identity theft affidavit, and (3) re-allocating future personnel and financial resources from other divisions to work on tax-related identify theft, and factor in projected growth of identity theft cases to inform the re-allocation.
- d. Reduce the number of Forms 14039 filed that involve identity theft, but not tax-related identity theft, by modifying Form 14039 to state at the top that the affidavit is for victims of tax identity theft and recommending that others obtain an IP PIN and only file the form later if there is tax-related identity theft.

## **ISSUE TEN: PTIN Database and Renewal System**

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**SOP Mapping:** None.

### **Executive Summary**

There is an excess number of Preparer Tax Identification Numbers (PTINs) in the database that are no longer active. Over two million PTINs have been issued since September 2010 when this system of identifying return preparers began and today there are about 775,000 active PTIN holders.<sup>137</sup> When a PTIN is not renewed (such as because a preparer retired or died), the PTIN is not cancelled. If an expired PTIN is used on a tax return, the return is still accepted with no delay in processing. The SB/SE Division can reach out to the preparer and assess penalties when appropriate. It is possible that the preparer cannot be reached (valid contact information may not be available to link the incorrect PTIN to the actual preparer). This makes it difficult to determine if there is fraudulent use of the PTIN or simply a data input error. The ability to use an expired PTIN can allow fraudulent preparers to prepare returns and sign them using an invalid PTIN.

### **Background**

In their 2018 report, “The Internal Revenue Service Lacks a Coordinated Strategy to Address Unregulated Return Preparer Misconduct,” TIGTA identified 72,590 ghost preparers in processing year 2016 with inactive PTINs who filed 2,769,381 or more tax returns. Of the 72,590 ghost preparers, 71,698 filed fewer than 500 tax returns each, totaling 2,008,945 tax returns, while 892 filed 500 or more tax returns, totaling 760,436 tax returns.<sup>138</sup>

Active PTIN holders include approximately 200,000 Certified Public Accountants, 58,000 Enrolled Agents, 27,000 attorneys and 78,000 Annual Filing Season Program Records of Completion. The approximately 412,000 remaining PTIN holders have no requirement to participate in continuing education (unless

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<sup>137</sup> IRS, Return Preparer Office federal tax return preparer statistics; <https://www.irs.gov/tax-professionals/return-preparer-office-federal-tax-return-preparer-statistics>.

<sup>138</sup> TIGTA, July 25, 2018; <https://www.tigta.gov/sites/default/files/reports/2022-02/201830042fr.pdf>.



required by a state requirement, such as in California) and often do not receive information about tax updates and continuing education opportunities that other PTIN holders may receive from professional organizations they might belong to.

The PTIN system collects personal preparer information. The information stored includes their personal address and phone number, business name, address, phone number, Employer Identification Number, Electronic Filing Identification Number (EFIN), Central Authorization File (CAF) number, and professional credentials. The PTIN system also collects continuing education credits from authorized third-party providers.

PTIN holders who file at least 50 returns can view a “returns per PTIN” link on the main menu of their PTIN account. PTIN holders are encouraged to review this data regularly. If the number of filed returns is greater than what the PTIN holder filed, the IRS encourages the PTIN holder to report possible misuse of their PTIN using Form 14157, Return Preparer Complaint. The data on number of returns filed only shows Form 1040 series returns.<sup>139</sup>

In addition to a PTIN, many preparers have a CAF number and have separate logins for renewing their PTINs, for logging in to their E-services account, and for logging in to their Tax Pro Account. Currently, the PTIN renewal system does not require the use of a credential service provider (CSP) that both E-Services and the Tax Pro Account necessitate. This allows for easier hacking by bad actors. The use of a CSP to renew PTINs will increase the security of the renewal process. This would also be in line with the requirement by tax preparers to use multifactor authentication to protect taxpayer information.<sup>140</sup> It may also encourage more preparers to use the Tax Pro Account.

The renewal period for PTINs opens in October and runs through December 31 of the year prior to the opening of the annual filing season. Some tax preparers do not renew during this renewal period and wait until the next year after the e-

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<sup>139</sup> IRS, FAQ Returns filed per PTIN; <https://www.irs.gov/tax-professionals/returns-per-ptin>.

<sup>140</sup> As a reminder of the multifactor authentication (MFA) requirement for tax professionals, see IR-2024-201 (Aug. 6, 2024); <https://www.irs.gov/newsroom/multi-factor-authentication-key-protection-to-tax-professionals-security-arsenal-now-required>.

filing season is open and accepting returns. This makes it challenging to determine if a PTIN is active or used by someone other than the PTIN holder.

Currently, the Modernized E-file system does not check if a PTIN is valid. The income tax return is processed without knowing if a fraudulent PTIN is being used on the return. There are over a million PTIN numbers that are not active that can still be used on a current filed return. The IRS collaborates with vendors to make sure that preparers filing electronically use their assigned EFIN. This same process used to verify EFINs could be used to verify PTINs. This would deter the use of fraudulent PTINs and catch “typos” before the e-filing process begins.

The PTIN renewal process provides an opportunity for the IRS to reach all preparers with key messaging.

### **Recommendations**

1. Deactivate and archive all PTINS that have not been renewed for the last three years and do not allow those PTINS to be used on tax returns.
2. Match the preparer name and PTIN on tax returns prior to initiating income tax refunds to taxpayers. If the preparer name and PTIN do not match, notify the preparer when possible, to determine if the PTIN is incorrect due to data input or to determine fraudulent use. Verify the taxpayer by other means to authenticate a valid tax return, such as prior year adjusted gross income, W-2 matching, 1099-Rs or other independent means to allow tax return to be processed.
3. Make the PTIN application and renewal process accessible through the Tax Pro Account to allow tax practitioners a one stop location to access IRS online services.
4. Publicize the procedure for tax practitioners to deactivate their PTINs such as on the PTIN home page where it can be easily found. In the annual email notice that PTIN renewal is available, include a reminder for PTIN holders to deactivate their PTIN if they are no longer preparing tax returns.
5. Require software vendors to validate PTINs used in their systems in the same manner as they currently validate EFINs.

6. Add a late fee to all annual PTIN renewals after December 31 to encourage timely renewals prior to the filing season.
7. Use the renewal email and the PTIN website for focused messaging such as participating in the Annual Filing Season Program, attending IRS Nationwide Tax Forums and IRS webinars for tax professionals, or signing up for e-News subscriptions.<sup>141</sup>
8. Enable a tax professional's PTIN account to show not only how many Forms 1040 were filed under that PTIN but also other returns including Forms 706, 709, 990, 1041, 1065, 1120 and 1120-S.

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<sup>141</sup> E-News subscriptions at <https://www.irs.gov/newsroom/e-news-subscriptions>.

## ISSUE ELEVEN: Oversight of Return Preparers

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**SOP Mapping:** None.

### **Executive Summary**

Our tax laws are complex. Over half of individual income tax returns are prepared by paid tax return preparers.<sup>142</sup> However, most return preparers are not subject to minimum competency standards and continuing education requirements.<sup>143</sup> In contrast, Enrolled Agents (EAs), certified public accountants (CPAs), and attorneys “Circular 230 practitioners” who practice before the IRS are subject to initial entry requirements and continuing requirements imposed by their regulating bodies as well as ethical duties under Circular 230<sup>144</sup> overseen by the IRS Office of Professional Responsibility (OPR). OPR also oversees Enrolled Retirement Plan Agents (ERPAs)<sup>145</sup> and Enrolled Actuaries.<sup>146</sup>

In the 2023 Annual Report to Congress, the National Taxpayer Advocate (NTA) lists lack of return preparer oversight as one of the most serious problems encountered by taxpayers (MSP #5). The NTA notes: “The absence of practice requirements and IRS oversight exposes taxpayers to a greater risk of incompetent or unethical actions by preparers.”<sup>147</sup>

This issue was identified by the IRSAC with support of the IRS. The IRSAC last made a recommendation about oversight of return preparers in 2018. That recommendation, similar to those of others, was “Congress provide the IRS statutory authority to establish and enforce minimum standards of competence for

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<sup>142</sup> Filing season statistics by year at <https://www.irs.gov/newsroom/filing-season-statistics-by-year>. Also see National Taxpayer Advocate, Important Considerations as You Select Your Return Preparer This Filing Season, Mar. 8, 2024; <https://www.taxpayeradvocate.irs.gov/news/nta-blog/important-considerations-as-you-select-your-return-preparer-this-filing-season/2024/03/> which notes that over 54% of all individual income tax returns were prepared by a paid preparer in 2023.

<sup>143</sup> IRS National Taxpayer Advocate, Annual Report to Congress 2023, Jan. 2024, pa. 65; <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/>.

<sup>144</sup> 31 C.F.R. Part 10, published at <https://www.irs.gov/pub/irs-pdf/pcir230.pdf>.

<sup>145</sup> IRS, Enrolled Retirement Plan Agent frequently asked questions; <https://www.irs.gov/tax-professionals/enrolled-retirement-plan-agent-frequently-asked-questions>.

<sup>146</sup> IRS, Joint Board for the Enrollment of Actuaries; <https://www.irs.gov/tax-professionals/enrolled-actuaries>.

<sup>147</sup> NTA, Annual Report to Congress 2023, *supra*.

all tax practitioners, including paid return preparers.”<sup>148</sup> The IRSAC continues to support a statutory change, but in the meantime, for this year’s report we offer recommendations for what the IRS might do to increase the number of preparers who demonstrate minimum competency, complete annual continuing education, and have limited practice rights accompanied by Circular 230 ethical duties.

## **Background**

Under 31 U.S.C. § 330 the Department of Treasury is authorized to regulate the practice of tax practitioners before the IRS. The first regulations<sup>149</sup> provided rules for the enrollment and disbarment of attorneys and agents.

The IRS implemented the Registered Tax Return Preparer (RTRP) program in 2011 after a lengthy stakeholder listening and rulemaking process.<sup>150</sup> The IRS had to terminate the RTRP credential after the *Loving v. Internal Revenue Service* decision in 2013 which held that the IRS did not have statutory authority to regulate tax return preparation.<sup>151</sup> The IRS is still allowed to require tax return preparers to obtain a preparer tax identification number (PTIN) used in signing returns. The Return Preparer Office (RPO)<sup>152</sup> oversees the annual PTIN renewal process.

After the court loss, the IRS created the voluntary Annual Filing Season Program (AFSP)<sup>153</sup> with the goal to increase accuracy of individual income tax returns (Form 1040) prepared by uncredentialed preparers and to bring more preparers under Circular 230. Participants opt into 18 hours of continuing education (CE) annually, including a six-hour federal tax refresher with a test component administered directly by the CE provider. They also opt into governance under certain parts of Circular 230 (Part B and 10.51).

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<sup>148</sup> IRSAC Public Report, Nov. 2018, Pub. 5316, pp. 19 to 21; <https://www.irs.gov/pub/irs-prior/p5316-2018.pdf>.

<sup>149</sup> Circular 230, 1921-4 C.B. 408 (Feb. 15, 1921).

<sup>150</sup> T.D. 9501, T.D. 9503, T.D. 9523, and T.D. 9527.

<sup>151</sup> *Loving v. IRS*, 742 F.3d 1013 (DC Cir. 2014).

<sup>152</sup> RPO, <https://www.irs.gov/about-irs/return-preparer-office-rpo-at-a-glance>.

<sup>153</sup> AFSP program information is available at <https://www.irs.gov/tax-professionals/annual-filing-season-program> and <https://www.irs.gov/tax-professionals/general-requirements-for-the-annual-filing-season-program-record-of-completion>.

A participant in the AFSP has limited representation rights before limited offices of the IRS for clients if the participant prepared and signed the return and is also a participant for the year of representation. While these are limited rights in contrast to Enrolled Agents, CPAs and attorneys who can represent anyone before the IRS, PTIN holders who are not an Enrolled Agent, CPA, attorney or AFSP participant have no right to represent clients before the IRS even if they prepared and signed the return.<sup>154</sup>

The IRS provides several exemptions that allow preparers to participate in the AFSP program without the test component. These exemptions<sup>155</sup> include:

- Anyone who passed the Registered Tax Return Preparer (RTRP) test administered by the IRS between November 2011 and January 2013.
- Established state-based return preparer program participants currently with testing requirements: Return preparers who are active registrants of the Oregon Board of Tax Practitioners, California Tax Education Council, and/or Maryland State Board of Individual Tax Preparers.
- SEE Part I Test-Passers: Tax practitioners who have passed the Special Enrollment Exam (SEE) Part I within the past three years.
- VITA volunteers: Quality reviewers and instructors with active PTINs
- Other accredited tax-focused credential-holders: The Accreditation Council for Accountancy and Taxation's Accredited Business Accountant/Advisor (ABA) and Accredited Tax Preparer (ATP) programs.

AFSP record of completion holders exempt from the test must complete 18 hours of continuing education (CE), consent to Circular 230 practice requirements, and maintain a valid PTIN.<sup>156</sup>

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<sup>154</sup> Rev. Proc. 2014-42, and IRS, Frequently asked questions: Annual filing season program, FAQ 13; <https://www.irs.gov/tax-professionals/frequently-asked-questions-annual-filing-season-program>.

<sup>155</sup> FAQ 7 at <https://www.irs.gov/tax-professionals/frequently-asked-questions-annual-filing-season-program>.

<sup>156</sup> IRS, Frequently asked questions: Annual filing season program, FAQ 8; <https://www.irs.gov/tax-professionals/frequently-asked-questions-annual-filing-season-program>. This FAQ also notes that a preparer exempt from the requirement to take the AFSP course does not need to notify the IRS

While the IRS promotes the AFSP record of completion, the program has low participation among uncredentialed preparers and is not fully understood by taxpayers.<sup>157</sup>

In contrast, Enrolled Agents must pass a three-part Special Enrollment Examination (SEE). Part 1 covers individual taxation, Part 2 covers business taxation, and Part 3 covers representation, practice, and procedure. Enrolled Agents must also pass a suitability check, maintain a PTIN, and complete 72 hours of continuing education over their three-year renewal cycle.

The following chart summarizes the requirements for each type of credential.

<b>Designation</b>	<b>Minimum competency</b>	<b>Renewal Cycle</b>	<b>CE Requirement</b>	<b>CE details</b>
Enrolled agent <sup>158</sup>	Special Enrollment Examination, Parts 1, 2 and 3, proctored by Prometric	Three years	72 hours	Minimum of 16 per year, 2 of which must be ethics
Filing Season Agent (proposed)	Special Enrollment Examination Parts, Parts 1 and 3, proctored by Prometric	Three years	60 hours	Minimum of 15 per year, 2 of which must be ethics
AFSP record of completion <sup>159</sup> (voluntary)	Annual Federal Tax Refresher (AFTR) Test proctored by the participant's chosen CE provider	Annual	18 hours	6-hour AFTR, 10 hours of other fed law, 2 hours of ethics

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of their exemption because the IRS “obtains information about exemptions directly from the testing source (e.g. Oregon Board of Tax Practitioners).”

<sup>157</sup> Per IRS statistics on PTIN holders, on July 1, 2024, there were 796,620 PTIN holders, of which 292,444 (36.7%) are credentialed and 504, 176 were uncredentialed. Also on July 1, 2024, there were 78,378 preparers who had completed the AFSP. Recognizing that some AFSP participants hold multiple credentials, the maximum number of uncredentialed preparers holding an AFSP is 15.5%. See IRS data at <https://www.irs.gov/tax-professionals/return-preparer-office-federal-tax-return-preparer-statistics>.

<sup>158</sup> Circular 230, §§ 10.3 – 10.6 at <https://www.irs.gov/pub/irs-pdf/pcir230.pdf>.

<sup>159</sup> Rev. Proc. 2014-42 at <https://www.irs.gov/pub/irs-drop/rp-14-42.pdf>.

RTRP <sup>160</sup> (enjoined)	RTRP exam proctored by Prometric	Annual	15 hours	3 federal law, 2 hours ethics, 10 hours of other federal tax topics
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Absent federal oversight over uncredentialed return preparers, states started building out their own unique regulatory programs with differing requirements. These states include California, Connecticut, Iowa, Maryland, New York, and Oregon. Tax preparation businesses continue to train tax preparers they employ according to their own needs and standards, Tax preparers operating as sole proprietors have complete discretion as to their preparation and training. These circumstances result in a wide variance in training and oversight over uncredentialed preparers across rural and urban areas of the United States.

Over the years, there have been proposals to modify 31 U.S.C. § 330 to include return preparation to allow the IRS to regulate all return preparers.<sup>161</sup> In addition, the following groups published reports supporting expanded return preparer oversight:

- Taxpayer Advocate Service (TAS)<sup>162</sup>
- Treasury Inspector General for Tax Administration (TIGTA)<sup>163</sup>
- Electronic Tax Administration Advisory Council (ETAAC)<sup>164</sup>
- Internal Revenue Service Advisory Council (IRSAC)<sup>165</sup>

<sup>160</sup> Circular 230, §§ 10.3 – 10.6 at <https://www.irs.gov/pub/irs-pdf/pcir230.pdf>.

<sup>161</sup> For example, see General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals, Expand and increase penalties for noncompliant return preparation and e-filing and authorize IRS oversight of paid preparers, pg. 206 at <https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf>; and H.R. 2702 (118<sup>th</sup> Congress) and H.R. 4184 (117<sup>th</sup> Congress).

<sup>162</sup> National Taxpayer Advocate, 2023 Purple Book, Legislative Recommendation #3 - Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers; [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22\\_PurpleBook\\_02\\_ImproveFiling\\_3.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_PurpleBook_02_ImproveFiling_3.pdf).

<sup>163</sup> TIGTA, *The Internal Revenue Service Lacks a Coordinated Strategy to Address Unregulated Return Preparer Misconduct*, July 25, 2018, 2018-30-042; <https://www.tigta.gov/sites/default/files/reports/2022-02/201830042fr.pdf>.

<sup>164</sup> Pub. 3415 (2024), page 10 at <https://www.irs.gov/pub/irs-pdf/p3415.pdf>.

<sup>165</sup> Pub. 5316 (2018), page 19 at <https://www.irs.gov/pub/irs-prior/p5316--2018.pdf>.



The Government Accountability Office (GAO)<sup>166</sup> also notes the IRS needs more authority over return preparers.

IRSAC continues to support expanded return preparer oversight and recommends the IRS take the following actions to strengthen voluntary programs while waiting for legislation.

### **Recommendations**

1. Modify Circular 230 to include a voluntary Filing Season Agent credential modeled off the Enrolled Agent credential, including minimum competency, continuing education, and ethical standard components. Filing Season Agents would be required to:
  - a. Demonstrate competence by passing Parts 1 and 3 of the Enrolled Agent examination.
  - b. Pass suitability checks and maintain a PTIN.
  - c. Complete 60 hours of continuing education under a three-year renewal cycle with a minimum of 15 hours per year with two hours being ethics education.
2. Phaseout the AFSP program and reallocate program resources to the voluntary Filing Season Agent program. Transition existing AFSP participants to the new program.
3. Increase participation by waiving the SEE Part 1 requirement for applicants who currently participate in the AFSP program with an exemption from completing the AFSP course.
4. Continue to promote the Enrolled Agent program and highlight that like CPAs and attorneys, Enrolled Agents have more practice rights before the IRS than do Filing Season Agents, including representing taxpayers regarding any type of tax return, even if they did not prepare their return.

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<sup>166</sup> GAO, *Paid Tax Return Preparers – IRS Efforts to Oversee Refundable Credits Help Protect Taxpayers but Additional Actions and Authority Are Needed*, GAO-23-105217; <https://www.gao.gov/assets/820/813604.pdf>.

5. Research and publish results regarding accuracy rates among AFSP record holders, uncredentialed preparers, and preparers otherwise exempt from AFSP test requirements (such as preparers subject to state requirements California, Maryland and Oregon) to determine the impact of minimum competency and continuing education requirements on tax administration.

## **ISSUE TWELVE: Broadening Continuing Education for Enrolled Agents to Include Practice Management Topics**

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**SOP Mapping:** None.

### **Executive Summary**

Currently Enrolled Agents are not permitted to include continuing education in practice management topics as reportable continuing education for certification renewal.

There is more to preparing tax returns than just knowing the tax law. Enrolled Agents are responsible for awareness regarding software, data security, due diligence, online tools, engagement letters, building client relationships, data analytics, artificial intelligence, and effective techniques for hiring and training of staff (including for remote employees) to best serve the tax needs of their clients.

NASBA (National Association of State Boards of Accountancy) and the AICPA recognize practice management topics for approved continuing education. In fact, their Statement on Standards for CPE Programs highlights the need for continuing education to include “programs contributing to the development and maintenance of professional skills.”<sup>167</sup> The IRSAC believes that other Circular 230 preparers, namely Enrolled Agents, should also have the opportunity for broader continuing education opportunities to enhance their tax practice.

### **Background**

Tax preparation has become much more complex with the continual advancement of technology. In addition to knowing tax law, tax professionals must understand how to operate a secure and compliant business. Tax preparers are responsible for data security, employees, ever-changing technology, and ongoing communications in a constantly changing world.

During 2023 and 2024 at the IRS Nationwide Forums, a practice management panel was presented to the Forum participants as an optional non-

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<sup>167</sup> NASBA and AICPA, The Statement on Standards for Continuing Professional Education (CPE) Programs, Jan. 2024, p. 4; <https://www.nasbaregistry.org/the-standards>.

continuing education program. The response was overwhelmingly positive, and participants requested more sessions in this area. Tax preparers need information on running a tax office, hiring, communications, time management, artificial intelligence and more. While many participated in this event, if continuing education had been offered, this presentation and other practice management programs could have been presented during the 3-day Forum and not as an extra event held the day before the official opening day of the Forums.

NASBA approves a wide range of continuing education topics for CPAs who are also governed by Circular 230. These topics include but are not limited to, business organization, communications, marketing, computer software and applications, information technology, and personnel/human resources.<sup>168</sup>

A more broadly educated Enrolled Agent will be better prepared for crucial everyday activities including securing data, hiring staff, and serving clients, and be less likely to have compliance and due diligence issues.

### **Recommendation**

Modify Sections 10.6(e)(2) and (f) of Circular 230 to allow up to four hours of practice management as an option within the 72 hours required to renew enrollment for Enrolled Agents. Practice management should be broadly defined as it is for CPAs to include business organization, communications, marketing, computer software and applications, information technology, elimination of bias, privacy laws, and personnel/human resources.

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<sup>168</sup> NASBA, Fields of Study That Qualify for Continuing Professional Education, Jan. 2024; [https://cdn.asp.events/CLIENT\\_NASBA\\_287596D2\\_5056\\_B733\\_49DFF69B632BDF66/sites/LearningMarket/media/Documents/2024-standards-fos/2024-Fields-of-Study-Document.pdf](https://cdn.asp.events/CLIENT_NASBA_287596D2_5056_B733_49DFF69B632BDF66/sites/LearningMarket/media/Documents/2024-standards-fos/2024-Fields-of-Study-Document.pdf).

## **ISSUE THIRTEEN: Process for Issuing New and Revised Forms and Obtaining Comments**

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**SOP Mapping:** None.

### **Executive Summary**

This issue was identified by the IRSAC in March 2024 when learning about new Form 15397, Application for Extension of Time to Furnish Recipient Statements, released in November 2023. While this new form was announced in the Federal Register for March 27, 2023, members of the IRSAC and likely many others were not aware of the form until the release of the final form and therefore missed the opportunity to provide comments before finalization.

The IRSAC is concerned that when many taxpayers and practitioners are not aware of new and revised forms and the opportunity and timeframe to provide comments, the effectiveness of such forms can be diminished. This led the IRSAC to learn more about the process for issuing new forms as well as modifications to existing forms and the public comment process. We summarize these processes here and offer recommendations to better ensure that comments on new and revised forms are submitted to the IRS before the forms are finalized.<sup>169</sup>

### **Background**

#### *The Paperwork Reduction Act*

The Paperwork Reduction Act of 1995<sup>170</sup> governs much of the process the IRS must undertake to issue new forms, make modifications to existing forms, and to continue use of existing tax forms (generally referred to as information collections). The Paperwork Reduction Act (PRA) requires federal agencies to obtain approval from the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) before collecting information from

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<sup>169</sup> Comments on Form 15397 are included in the Information Reporting Subgroup section of this report as Issue Five.

<sup>170</sup> Title 44 U.S.C. Chapter 35 (Sections 3501 to 3521), originally enacted as the Paperwork Reduction Act of 1980 (P.L. 96-511). This Act created the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) to administer the Paperwork Reduction Act.

the public.<sup>171</sup> The required announcements about tax forms are published in the Federal Register.<sup>172</sup>

Per the PRA, forms for collecting information from the public must have an “OMB control number.”<sup>173</sup> The OMB control number is valid for three years which means that the IRS must make PRA announcements in the Federal Register to solicit public comments every three years for all continuing tax forms (even if no changes are proposed) so that they have a valid OMB control number.<sup>174</sup> PRA announcements in the Federal Register are also required for any new collection of information whether on a new or revised tax form. The importance of following the PRA and having an OMB control number on tax forms is highlighted in instructions to IRS forms which generally include the following statement:

“You are not required to provide the information requests on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number.”<sup>175</sup>

The OMB control number is noted at the top of tax forms. For example, OMB number 1545-0074 appears at the top of Form 1040.

Form <b>1040</b>	Department of the Treasury—Internal Revenue Service <b>U.S. Individual Income Tax Return</b>	<b>2023</b>	OMB No. 1545-0074	IRS Use Only—Do not write or staple in this space.
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Treasury Directive 80-06 (Sept. 25, 2017) describes the purpose of the PRA as follows:

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<sup>171</sup> 44 U.S.C. § 3504.

<sup>172</sup> General requirements for collection of information under the PRA are provided at 5 CFR Part 1320, Controlling Paperwork Burdens on the Public; <https://www.ecfr.gov/current/title-5/chapter-III/subchapter-B/part-1320>.

<sup>173</sup> 44 U.S.C. § 3506(c)(1)(B)(i).

<sup>174</sup> Renewal announcements for existing forms are published in the Federal Register and often note that no changes are being made to the form and that the form is “being submitted for renewal purposes only.” See, for example, the Federal Register entry of March 26, 2024 (p. 21174) for Form 4797, Sales of Business Property; <https://www.govinfo.gov/content/pkg/FR-2024-03-26/pdf/2024-06383.pdf>. This notice includes: “*Current Actions*: There are no changes being made to the form at this time. The forms are being submitted for renewal purposes only.” This Federal Register entry also included a request for comments by May 28, 2024.

<sup>175</sup> See, for example, p. 107 of the instructions for the 2023 Form 1040, and p. 25 of the 2024 General Instructions for Certain Information Returns.

“The PRA was enacted to ensure that agencies do not overburden the public with federally-sponsored collections of information, by mandating that agencies minimize the information management burden that they place on the public. The PRA generally requires that no agency collect information from the public without notice and public comment and prior approval of the Office of Management and Budget (OMB). The PRA also requires agencies to report to Congress annually on their efforts to reduce the burden on the public, identify burden reduction initiatives, and disclose any unauthorized information collections from the public.”<sup>176</sup>

Section 3501 of Title 44 on the PRA lists eleven purposes of the PRA. Notably, the purposes include minimizing paperwork burden for individuals and others; to “maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;” and minimize the cost to the government of creating, collecting, maintaining and using information. These purposes highlight the importance of the PRA process including the opportunity for the public to provide comments to the IRS on information collection actions.

The PRA requires agencies to provide a 60-day public comment period.<sup>177</sup> The request for comments published in the Federal Register states the topics for which input is desired.<sup>178</sup> For example, the request for comments on new Form 15397 stated:<sup>179</sup>

*“Desired Focus of Comments:* The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

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<sup>176</sup> U.S. Dept. of the Treasury, Treasury Directive 80-06, Sept. 25, 2017; <https://home.treasury.gov/about/general-information/orders-and-directives/td80-06>.

<sup>177</sup> 44 U.S.C. § 3506(c)(2)(A). PRA regulations allow for “emergency processing” of information collections in specified circumstances (5 C.F.R. 1320.13).

<sup>178</sup> Congressional Research Service (CRS), *The Paperwork Reduction Act and Federal Collections of Information: A Brief Overview*, p. 2; <https://crsreports.congress.gov/product/pdf/IF/IF11837>.

<sup>179</sup> 88 FR 18220 (Mar. 27, 2023); <https://www.govinfo.gov/content/pkg/FR-2023-03-27/pdf/2023-06191.pdf>.

- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.”

This specification of desired comments is similar to those requested for other new forms or collections as well as for renewal of existing forms announced in the Federal Register.<sup>180</sup>

The PRA also requires that following the 60-day comment period announced by the IRS, a 30-day comment period is announced by the Department of the Treasury, also posted in the Federal Register.<sup>181</sup> For example, announcements of the comment periods and due dates for new<sup>182</sup> Form 14234-E, Compliance Assurance Process (CAP) Cross Border Activities Questionnaire (CBAQ), were as follows:<sup>183</sup>

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<sup>180</sup> For example, see the announcement of new Form 1099-DA, Digital Asset Proceeds From Broker Transactions, at 89 FR 29433 (Apr. 22, 2024); <https://www.govinfo.gov/content/pkg/FR-2024-04-22/pdf/2024-08528.pdf>; and the form renewal announcement for Form 4797, Sales of Business Property, at 89 FR 21174 (Mar. 26, 2024); <https://www.govinfo.gov/content/pkg/FR-2024-03-26/pdf/2024-06383.pdf>.

<sup>181</sup> The 60-day and 30-day comment periods are also explained in CRS, *The Paperwork Reduction Act and Federal Collections of Information: A Brief Overview*, *supra*.

<sup>182</sup> The Federal Register posting about Forms 14234-E and 14234-F indicate that the type of review is a revision of a currently approved collection. However, the text of the announcement notes that these forms are new. However, Forms 14234-A to -D related to the CAP program already exist which is likely what made this type of review a revision of currently approved collection rather than a review of new forms. See 89 FR 20535 (Mar. 22, 2024); <https://www.govinfo.gov/content/pkg/FR-2024-03-22/pdf/2024-06057.pdf>.

<sup>183</sup> The postings of the 60-day and 30-day announcements can be found at the OIRA website (dashboard) by searching for either the form number or OMB number in the search box when “ICR” (Information Collection Review) is selected. When the search results appear, selecting “FR Notices/Comments” for display shows the Federal Register posting details and if the “agency” received public comments on the ICR.



Notice	Federal Register	Comments Due
60-day	<a href="#">89 FR 20535</a> (March 22, 2024)	May 21, 2024
30-day	<a href="#">89 FR 52218</a> (June 21, 2024)	July 22, 2024

PRA postings in the Federal Register for IRS forms appear to involve at least four possible types of review. “Type of Review” is part of the Federal Register postings about tax forms. We found the following four types of review:

1. New collection  
Example: 89 FR 29433 (April 22, 2024)<sup>184</sup> about Form 1099-DA, Digital Asset Proceeds From Broker Transactions.
2. New form  
Example: 88 FR 6372 (Jan. 31, 2023)<sup>185</sup> about Form 7208, Excise Tax on Repurchase of Corporate Stock.
3. Revision of a currently approved collection  
Example: 88 FR 63199 (Sept. 14, 2023)<sup>186</sup> about Form 8824, Like-Kind Exchanges.
4. Extension of a currently approved collection  
Example: 89 FR 21174 (March 26, 2024)<sup>187</sup> about Form 4797, Sales of Business Property.

The first three types of review listed above are ones where it is highly likely that taxpayers and tax practitioners will want to be aware of the form additions or significant form changes and how comments can be submitted.

#### *Access to Drafts of New or Revised Tax Forms*

The Federal Register announcements about tax forms and the request for comments do not include the form or a link to obtain it. Instead, interested parties

<sup>184</sup> 89 FR 29433 (Apr. 22, 2024); <https://www.govinfo.gov/content/pkg/FR-2024-04-22/pdf/2024-08528.pdf>.

<sup>185</sup> 88 FR 6372 (Jan. 31, 2023); <https://www.govinfo.gov/content/pkg/FR-2023-01-31/pdf/2023-01869.pdf>.

<sup>186</sup> 88 FR 63199 (Sept. 14, 2023); <https://www.govinfo.gov/content/pkg/FR-2023-09-14/pdf/2023-19888.pdf>.

<sup>187</sup> 89 FR 21174 (Mar. 26, 2024); <https://www.govinfo.gov/content/pkg/FR-2024-03-26/pdf/2024-06397.pdf>.

are directed to an individual listed in the announcement with that person's phone number and email address provided for requesting the form. Sometimes, the form is posted at the IRS Draft Tax Forms website (although that link is not included in the Federal Register postings). For example, draft Form 1099-DA was announced in the Federal Register on April 22, 2024, and the draft form (dated April 18, 2024) was available at the IRS Draft Tax Forms website.<sup>188</sup>

Forms posted at the IRS Draft Tax Forms website are almost always readily downloadable as a pdf document. However, a few forms, such as Form 14234-E (noted earlier), may produce a "Please wait ..." message instructing the user they need to upgrade to the latest version of Adobe Reader and a URL is provided for that purpose. Those receiving this message generally do not receive it when accessing most other forms at the draft forms website.<sup>189</sup>

Generally, the instructions to a draft form are not available until a later time which can make it difficult to identify the changes to existing forms or gain a complete understanding of lines on new and revised forms. This means that comments submitted by the due date for the new or revised draft form may be incomplete as the commenter was not aware of all changes or their significance until instructions are released.

#### *Solicitation of Comments*

The Federal Register announcements for new, revised, and renewed forms highlight the desire for comments because the Federal Register heading includes "Comment Request" and the first paragraph of the entry states that the IRS "invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995."<sup>190</sup>

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<sup>188</sup> IRS, Draft Tax Forms; <https://www.irs.gov/draft-tax-forms>. Draft Form 1099-DA was posted to this website on April 18, 2024. The existence of the form (but not the link to it) was posted in the Federal Register on April 22, 2024 (89 FR 29433); <https://www.govinfo.gov/content/pkg/FR-2024-04-22/pdf/2024-08528.pdf>.

<sup>189</sup> While the inability to easily download some draft forms may appear to be a software issue for the user, it only occurs for a few forms thus indicating that the forms that generate an error message for the user are posted differently than the vast majority of draft IRS forms.

<sup>190</sup> See earlier footnotes with links to Federal Register postings about new and revised forms as well as renewal of existing collections.

In addition, the cover sheet to draft tax forms posted at the IRS Draft Tax Forms website explains how to submit comments with a link to a website for doing so. No due date is provided for these comments and the IRS notes that it may not be able to consider the suggestions until a later revision of the form but assures that all properly submitted comments are reviewed.

While it appears that the two techniques for submitting comments on draft tax forms are those spelled out in the Federal Register and the cover sheet to draft tax forms, an IRS news release in September 2023 provided another approach although the request was for “feedback” rather than comments. This solicitation of feedback was for Form 6765, Credit for Increasing Research Activities. The news release included a link to the form which had a watermark stating, “Preview of Proposed Changes for 2024.”<sup>191</sup> In June 2024, another IRS news release announced the release of draft Form 6765 incorporating changes based on “helpful comments” received on the earlier draft.<sup>192</sup>

The use of multiple methods to request comments on draft forms and how to submit them can create some confusion for taxpayers and practitioners interested in submitting comments. Also, because the delivery of comments is different depending on where the request is posted, comments might not get to the appropriate group at the IRS for timely consideration. In addition, if potential commenters do not know how the IRS announces new and revised draft forms,

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<sup>191</sup> IR-2023-173 (Sept. 15, 2023), “IRS requests feedback on preview of proposed changes to Form 6765, Credit for Increasing Research Activities,” <https://www.irs.gov/newsroom/irs-requests-feedback-on-preview-of-proposed-changes-to-form-6765-credit-for-increasing-research-activities>. We note that the terminology used in this request is different from a request released in the Federal Register in that the IRS was making a “preview of proposed changes” available and seeking feedback, rather than comments. The comments on the previewed changes were to be sent to an email address in the LB&I Division by Oct. 31, 2023.

Note that the URL provided in this footnote for IR-2023-173 does not work (at least at September 30, 2024) because that news release has been removed from the IRS website (<https://www.irs.gov/newsroom/news-releases-for-september-2023>). The news release and the Form 6765 with the proposed changes for which a link was provided in the IR, can be obtained using an internet archive website if desired.

<sup>192</sup> IR-2024-171 (June 21, 2024), “IRS releases revised draft Form 6765, Credit for Increasing Research Activities, following public comment,” <https://www.irs.gov/newsroom/irs-releases-revised-draft-form-6765-credit-for-increasing-research-activities-following-public-comment>. A link to the revised draft form was included in this IR and at the IRS Draft Tax Forms website: <https://www.irs.gov/pub/irs-dft/f6765--dft.pdf>. This collection of feedback and modification of a draft seems to be a prelude to eventually posting the revised form in the Federal Register for public comment.

they might send the comments to a general IRS address or email or to someone they know at the IRS, unaware that a process exists for getting comments to the proper IRS unit.

We found the following four methods for submitting comments on new, revised, and renewed draft forms:

1. *Federal Register Instructions*: The Federal Register entry for new, revised, and renewed tax forms includes where to send comments and the due date (generally an IRS mailing address and an email address for comments due within the 60-day period and a link to an OIRA website for comments due within the 30-day period).
2. *OIRA Website*: If searching at the OIRA website using “ICR” as the selection (above the search box), the resulting website may include a “comment” box to click. For example:<sup>193</sup>

The screenshot shows the OIRA website header with the logo and navigation menu. A search bar is visible with 'ICR' selected. Below the search bar, there are several filter options:  Abstract/Justification,  Legal Statutes,  Rulemaking,  FR Notices/Comments,  IC List,  Burden,  Misc.,  Common Form Info,  Certification,  All, and  Brief. There are also links for 'View Information Collection (IC) List' and 'View Supporting Statement and Other Documents'. The main heading is 'View ICR - Agency Submission' with a prominent 'COMMENT' button. Below this, there is a summary of the ICR submission:

OMB Control No: 1545-2312  
 Status: Received in OIRA  
 Agency/Subagency: TREAS/IRS  
 Title: Compliance Assurance Process (CAP) Application and Associated Forms  
 Type of Information Collection: Revision of a currently approved collection  
 Type of Review Request: Regular

ICR Reference No: 202402-1545-008  
 Previous ICR Reference No: 202302-1545-004  
 Agency Tracking No:  
 Common Form ICR: No  
 Date Submitted to OIRA: 06/21/2024

	Requested	Previously Approved
Expiration Date	36 Months From Approved	09/30/2026
Responses	875	125
Time Burden (Hours)	4,682	1,584
Cost Burden (Dollars)	0	0

<sup>193</sup> The site shown above was obtained in July 2024 in searching for Form 14234-F, a new form noted elsewhere in this report.

Clicking the comment box leads the user to a web template which allows for inserting comments (up to 3500 characters) or uploading a file (if the comment period is still open).<sup>194</sup>

3. *Cover Sheet of Draft Forms Posted at the IRS Draft Tax Forms website*: The cover sheet to draft forms posted at the IRS Draft Tax Forms website includes the following text:

“If you wish, you can submit comments to the IRS about draft or final forms, instructions, or pubs at [IRS.gov/FormsComments](https://www.irs.gov/formscomments). Include “NTF” followed by the form or pub number (for example, “NTF1040”, “NTFW4”, “NTF501”, etc.) in the body of the message to route your message properly. We cannot respond to all comments due to the high volume we receive and may not be able to consider many suggestions until the subsequent revision of the product, but we will review each “NTF” message. If you have comments on reducing paperwork and respondent (filer) burden, with respect to draft or final forms, please respond to the relevant information collection through the Federal Register process; for more info, click [here](#).”

The first link in the above text leads the user to a template website where comments can be entered in a box. There is no option to upload a letter. Thus, formatting, footnotes, and letterhead information is lost.

The second link in the text (“here”) goes to a Federal Register website (<https://www.federalregister.gov/reader-aids/using-federalregister-gov/the-public-commenting-process>) with information on “Commenting on Federal Register Documents.” This information appears to only address submission of comments on “rules, proposed rules, and notices.”

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<sup>194</sup> The OIRA website is at <https://www.reginfo.gov/public/>. While the website heading includes “Reginfo.gov,” using the search box (ICR) for form or OMB control numbers produces information about the PRA process for that form.

4. *IRS News Release*: As noted earlier for proposed revisions to Form 6765 in 2023, feedback was solicited via IR-2023-173 (Sept. 15, 2023) with comments to be sent to an email address in the LB&I Division. This manner of announcing possible form changes and soliciting feedback is not common.

### **Recommendations**

1. *Clarify and publicize the comment process for new and revised forms and instructions and make it simple to submit comments with such comments publicly available*: The IRS should create a website that explains the process the IRS is required to follow in releasing new and revised forms, as well as the requirement to obtain approval every three years for continuing forms. This website should also explain how and when to submit comments on these forms (including when there is no Paperwork Reduction Act Federal Register announcement, but a person has suggestions for any tax form). This website should also remind readers that draft instructions are usually released after the draft form and that readers are encouraged to also comment on these drafts. If possible, there should be only one location/address for submitting comments (such as a website) and if a single location is not possible (such as due to PRA requirements), commenters should clearly be informed when they need to submit comments to multiple recipients or websites. Commenters should always have the option to either enter comments into a comment box or upload a document with their comments (or mail the comments to an address that is easy to find in the submission instructions). Similar to comments submitted on IRS notices or proposed regulations, the comments submitted for draft forms should be available to the public on a website such as Regulations.gov.
2. *Provide ready and timely access to new and revised draft forms*: Draft forms should be posted to the IRS Draft Tax Forms website and that URL should be included in the Federal Register announcement about new forms. All

forms at this website should be readily downloadable in the same manner (none should provide a message about the need to download software for access).

3. *Reopen the comment period when the instructions to a new or revised form are released if they were not released at the same time as the draft form was released.* This will better ensure that comments on the new or revised form are complete and comprehensive because lines and boxes on new and revised forms may not be understandable without the instructions. If this is not possible for comments on new and revised draft forms due to PRA rules, provide an explanation on a website (see Recommendation 1 above) about what happens with comments on draft instructions to new and revised tax forms. Issuance of draft instructions early in the 60-day comment period would be helpful to commenters.
4. *Widely announce the opportunity to comment on new and revised forms and their instructions:* In addition to the required Paperwork Reduction Act posting in the Federal Register, the release of new and significantly revised forms should also be announced in an IRS news release (IR) which can include the Federal Register link, a link to the draft form, and instructions on how to submit comments as well as the due date. This news release should also refer readers to the IRS website about the IRS and PRA requirements for releasing draft forms and obtaining comments on them (see Recommendation 1 above).

**INTERNAL REVENUE SERVICE ADVISORY COUNCIL**

**Information Reporting Subgroup Report**

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## INTRODUCTION

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The 2024 IRSAC Information Reporting (IR) subgroup is a diverse group of seven tax professionals with expertise in information reporting and withholding issues spanning Chapters 3, 4, and 61 of the Internal Revenue Code. The subgroup members represent various industries including financial services and insurance and collaborate with representatives from the IRS on a wide range of issues impacting payroll and non-wage withholding and information reporting.

Information reporting issues impact every business operating division within the IRS and the IR subgroup is grateful for the cooperation we received from members of the various divisions in producing this report. The IR subgroup also appreciated the opportunity to collaborate with members from the Office of Chief Counsel through a quarterly meeting on a variety of policy issues impacting information reporting and withholding. We are especially thankful for the assistance given by Tanya Barbosa, IR Subgroup Liaison – her tireless efforts to keep us organized and on track did not go unnoticed.

Our report addresses the following topics, all identified by the IR Subgroup:

1. Worker Classification Clarifications Needed Due to New Department of Labor (DOL) Test
2. SECURE Act Request for Certain IRA Tax Reporting Guidance
3. SECURE 2.0 Act Qualified Tuition Program Transfer to Roth IRA
4. Businesses Need Support from IRS Large Corporation Representatives
5. Form 15397, Application for Extension of Time to Furnish Recipient Statements, Needs Updating to Include Additional Reasons
6. Electronic Recipient Statement for Form 1099-DA, Digital Asset Proceeds From Broker Transactions
7. Streamline E-Filing of Forms 1042

## **ISSUE ONE: Worker Classification Clarifications Needed Due to New Department of Labor (DOL) Test**

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**SOP Mapping:** 1.7, 1.9.

### **Executive Summary**

The U.S. Department of Labor (DOL) and the IRS executed and published a Memorandum of Understanding (“MOU”) for Employment Tax Referrals on December 22, 2022.<sup>195</sup> The purpose of the MOU is to “share information between the SB/SE division at the IRS and the DOL’s Wage and Hour Division (WHD) to assist in the identification of emerging and ongoing employment tax compliance issues related to misclassification,” but its practical effect will be to streamline the process for investigating and penalizing businesses that allegedly misclassify their employees as independent contractors and reduce confusion for independent contractors.

The IRS and WHD deal with laws that use different tests to distinguish between employees and independent contractors. The differences between the two agencies vary from recognizing a profit or loss, unreimbursed business expenses, nature and degree of control, and how the worker is paid. In addition, employers and individuals must also contemplate the IRS and WHD definitions compared to the various worker classification regimes used by the states and other federal laws where classification is relevant. As a result of these conflicting tests at the Federal and state levels, individuals face confusion understanding if they work as employees or independent contractors. This is demonstrated by the upsurge of gig workers from one million workers in 2012 to five million workers in 2021<sup>196</sup> creating a group of independent contractors working in both part-time and full-time capacity. These individuals rely on the IRS for guidance and assistance, but legally the IRS cannot provide instruction or direction to individuals beyond sharing the IRS website for its common law test to classify workers.

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<sup>195</sup> Memorandum of Understanding Between the Internal Revenue Service Small Business/Self Employed Specialty Employment Tax and the US Department of Labor Wage and Hour Division for Employment Tax Referrals; Dec. 22, 2022: <https://www.dol.gov/sites/dolgov/files/WHD/MOU/MOU-WHD-IRS-22-signed.pdf>.

<sup>196</sup> Garin, Jackson, Koustas, and Miller, *The Evolution of Platform Gig Work, 2012-2021*, University of Chicago, 2023, p. 44; <https://www.irs.gov/pub/irs-soi/23rpevolutionofplatformgigwork.pdf>.

Per Section 530(b) of the Revenue Act of 1978 (Section 530),<sup>197</sup> the IRS may not issue guidance to employers or independent contractors and employees seeking assistance on the worker classification test it uses. However, the DOL and state agencies may issue guidance, and this can create confusion for employers and individuals wanting to better understand the nuances amongst the different classification regimes.

The IRSAC believes that the IRS needs to be able to issue guidance on worker classification issues to aid both independent contractors and employers. Where there is opportunity to align elements of the different classification regimes in explaining these regimes and thereby reduce confusion, the IRSAC recommends that these agencies consider these opportunities.

### **Background**

Per the 2022 MOU, the WHD has responsibility for two actions:

1. Provide information and data to the SB/SE Division (IRS) on WHD investigations that WHD believes may raise employment tax compliance issues related to misclassification.
2. The WHD will share training materials and opportunities to address misclassification with the SB/SE to the extent possible.

The SB/SE Division is responsible for three functions:

1. Evaluate employment tax referrals provided by the WHD that meet standardized criteria to conduct examinations to determine compliance with employment tax laws.
2. Provide reports that summarize results achieved through the tax referrals to the WHD annually
3. When requested by WHD, the SB/SE will provide any new or revised employment tax training materials.

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<sup>197</sup> The Revenue Act of 1978 (P.L. 95-600, Nov. 6, 1978).

The overall management of the MOU falls into four categories: Outreach, Records and Security, Resolutions, and MOU Evaluation and Methods of Referrals.

Section 530 limits the ability of the IRS to assist with questions to clarify whether an individual is an employee or an independent contractor for determination of tax liability by the employer. Recognizing that employers and taxpayers need guidance, the administration proposed a solution in the Department of the Treasury, General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals<sup>198</sup> (Treasury Greenbook). Pursuant to this proposal, the IRS would be permitted to issue general guidance to address worker classification to prevent misclassification that would lead to tax withholding issues. As stated in the Treasury Greenbook proposal: "Since 1978, there have been many changes in working relationships between service providers and service recipients. As a result, there has been continued and growing uncertainty about the correct classification of some workers." This confusion has exploded with the growth of the gig economy and especially the number of independent contractors engaged with ride sharing and food delivery service providers.

Section 530 outlines a relief provision for employers to eliminate the tax liability with respect to an individual being incorrectly treated as an "independent contractor" if three statutory obligations are met: 1) reporting consistency, 2) substantive consistency, and 3) reasonable basis. However, this relief does not apply to the worker who could suffer the employee share of Federal and State income taxes, as well as to the employer for their obligations for Federal and State unemployment taxes or responsibilities under the Affordable Care Act. The lack of consistency between the IRS and DOL worker classification tests creates an undue hardship on individuals in the growing gig economy that do not completely understand the complex nature of their tax liability. Additionally, the lack of guidance increases the burden on companies and individuals to review and

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<sup>198</sup> Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals*, pp. 205 to 207.

understand the differing tests to determine who is an employee and who is an independent contractor.

*Conflicting Definitions and Confusion for Employers*

As offered to the DOL in comments to its Notice of Proposed Rulemaking, Employee or Independent Contractor Classification Under the Fair Labor Standards Act<sup>199</sup> (NPRM), employers are concerned with the conflicting definitions of employee and independent contractor between the proposed DOL rules, and the common law definition used by the IRS. The table below shows the factors by which each agency determines whether a company has misclassified its workers.

<b>IRS</b>	<b>DOL</b>
The extent to which the worker can realize a profit or loss.	Opportunity for profit or loss depending on the managerial skills. <sup>200</sup>
The extent to which the worker has unreimbursed business expenses.	
The extent of the workers' investment.	Extent to which the work performed is an integral part of the employer's business. <sup>201</sup>
The extent to which the worker makes his or her services available in the relevant market.	Nature and degree of control: <sup>202</sup> overview of control factors, scheduling, supervision, setting a price or rate for goods or services, and the ability to work for others.
How the business pays the worker.	
	Degree of permanence of the work relationship. <sup>203</sup>

<sup>199</sup> NPRM Employee or Independent Contractor Classification Under the Fair Labor Standards Act. (Oct. 13, 2022); <https://www.federalregister.gov/documents/2022/10/13/2022-21454/employee-or-independent-contractor-classification-under-the-fair-labor-standards-act>.

<sup>200</sup> NPRM § 795.110(b)(1).

<sup>201</sup> NPRM § 795.110(b)(5).

<sup>202</sup> NPRM § 795.110(b)(4).

<sup>203</sup> NPRM § 795.110(b)(3).

	Skill and initiative. <sup>204</sup>
	Additional Factors. <sup>205</sup>

In some cases, the different tests that the IRS and DOL require to determine whether an individual is an employee, or an independent contractor produce different results for the same individuals. While the aspects of the proposed DOL requirements overlap with the IRS, the rules are not the same and can leave employers and independent contractors in a gray area and at risk for penalties.

In addition to the Federal worker classification criteria, employers and taxpayers also must comply with state worker classification laws. Some states require employers and individuals to follow another set of criteria known as the ‘ABC test’ which is a three-factor test for employers to use to determine whether the worker is an employee or independent contractor with the analysis beginning with the assumption that the worker is an employee. However, each state has unique exceptions to the ABC test if used. For example, in California, the state’s AB-5 law<sup>206</sup> uses the ABC test unless one of over 50 exceptions is met which then requires use of the “Borello factor test” and the law provides a special exemption for certain app-based drivers which are always classified as independent contractors although possibly provided with some benefits from the employer.

The conflicts in worker classification test criteria between the DOL, IRS, and states create such confusion, like in the case of California, that it is possible that taxpayers at a company or individual level could comply with one test but be out of compliance with the other two agency tests, and face difficulty explaining the variations to workers. Employers already face numerous challenges with classifying employees and independent contractors correctly, and the differing criteria between agencies creates more confusion. Companies struggle to categorize workers correctly due to multiple issues including:

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<sup>204</sup> NPRM § 795.110(b)(6).

<sup>205</sup> NPRM § 795.110(b)(7).

<sup>206</sup> AB-5, Worker status: employees and independent contractors, Sept. 18, 2019: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB5](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB5).

1. Poor Understanding – Taxpayers struggle to understand all the differences in criteria for determining an employee versus an independent contractor.
2. Insufficient Training – Employers and Independent Contractors lack proper training programs, and knowledge or education on employee classification rules and there is no guidance from the IRS.
3. Inadequate Documentation and Retention – Employer’s do not record data correctly in their Human Capital Management (HCM) systems to demonstrate how employees were classified, placing them at risk for an IRS or DOL audit. This also affects independent contractors that do not comprehend documentation requirements potentially leaving them with a tax bill they are not prepared to pay.

### **Recommendations**

1. Work with the DOL to define who is an employee and who is an independent contractor to eliminate any ambiguity and confusion for employers and individuals. Providing a guide to the differences would be helpful to employers and workers.
2. Work within the definitions established by the DOL to eliminate gaps and create clarity to prevent misclassification of workers and risk of employer penalties.
3. Working with the Department of Treasury, work with lawmakers to adopt the following recommendations outlined in the 2017 Treasury Greenbook.<sup>207</sup>
  - a. Permit the IRS to require prospective reclassification of workers who are currently misclassified and whose reclassification has been prohibited under current law.
  - b. Permit the IRS to issue generally applicable guidance on the proper classification of workers under common law standards.

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<sup>207</sup> Department of the Treasury, *General Explanations of the Administration’s Fiscal Year 2017 Revenue Proposals*, Feb. 2016, pp. 205 to 207.

- c. Require service recipients to give notice that explains how workers will be classified and the consequences thereof to independent contractors including tax implications.
- d. Permit the IRS to disclose to the DOL about service recipients whose workers are reclassified.

Adopting these recommendations would allow the IRS to instruct and direct individuals and companies where to locate resources to understand their tax liability, aid individuals that lack resources and knowledge of the tax law to prevent underpayment and under-reporting.



## **ISSUE TWO: SECURE Act Request for Certain IRA Tax Reporting Guidance**

**SOP Mapping:** 1.7, 1.9.

### **Executive Summary**

The Individual Retirement Arrangement (IRA) is a valuable tool for taxpayers to save for retirement, especially when the taxpayer does not participate in a workplace retirement plan. The administration rules that an IRA custodian must follow are substantially similar to the rules that a qualified retirement plan administrator must apply, even while there are fundamental differences between IRAs and qualified retirement plans.

The Setting Every Community Up for Retirement and Enhancement (SECURE) Act of 2019<sup>208</sup> and The SECURE 2.0 Act of 2022<sup>209</sup> added distribution and repayment options that exempt the taxpayer from the 10% additional tax on early distributions (commonly referred to as the early withdrawal penalty) and allow taxpayers to repay these distributions over three years.

While a qualified retirement plan needs to enforce rules limiting distributions and repayments to the plan, an IRA owner may take distributions on demand, and make contributions up to the statutory limit described under Section 219. The parallel nature of the requirements puts many IRA custodians in a position where they are ill-suited to perform the due diligence required of a qualified retirement plan.

### **Background**

The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 was signed into law on December 20, 2019, as part of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94). The SECURE 2.0 Act of 2022 (SECURE 2.0) was signed into law on December 29, 2022, as part of the Consolidated Appropriations Act of 2023 (P.L. 117-328).

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<sup>208</sup> The Setting Every Community Up for Retirement Enhancement Act of 2019 (P.L. 116-94, Dec. 20, 2019).

<sup>209</sup> The Setting Every Community Up for Retirement Enhancement Act of 2022 (P.L. 117-328, Dec. 29, 2022).

### *Distributions*

Section 72(t)(1) imposes a 10% tax on distributions from a qualified retirement plan including an IRA. Section 72(t)(2) lists exceptions to the 10% additional tax. For example, Section 72(t)(2)(A)(i) exempts distributions made after the payee attains age 59½. SECURE and SECURE 2.0 added distributions exempt from the additional tax, and conditions for repayment of certain of those distributions. Some distributions added or updated by the two SECURE Acts include:

- 72(t)(2)(H) Distributions From Retirement Plans In Case Of Birth Of Child Or Adoption
- 72(t)(2)(I) Distributions for Certain Emergency Expenses
- 72(t)(2)(K) Distribution From Retirement Plan in Case of Domestic Abuse
- 72(t)(2)(L) Terminal Illness
- 72(t)(2)(M) Distributions From Retirement Plans in Connection With Federally Declared Disasters

IRA plan custodians issue Forms 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. indicating distribution transactions. Forms 1099-R apply distribution codes to aid the taxpayer and the IRS in properly treating these distributions as income and/or as subject to additional tax. The distributions described above will have applied one of the following two distribution codes:

- (1) Early distribution, no known exception
- (2) Early distribution, exception applies

In August 2024, the IRS published the draft *2024 Instructions for Forms 1099-R and 5498*<sup>210</sup> containing welcome clarification regarding early distributions under Section 72(t)(2)(H), (I), (K), (L) to use distribution code (1) indicating “no known exception.” These instructions for distributions under Section 72(t)(2)(I), (K), and (L) are new to these instructions and as of this writing only in draft form.

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<sup>210</sup> See 2024 Instructions for Forms 1099-R and 5498 (draft dated Aug. 15,2024); <https://www.irs.gov/pub/irs-dft/i1099r--dft.pdf>.

Further, there remains some uncertainty regarding distributions under Section 72(t)(2)(M). Notice 2005-92 provides that either distribution code (1) or (2) is permitted.<sup>211</sup> This notice does provide that a plan is permitted to rely on “reasonable representations from a distributee” unless the plan sponsor has actual knowledge to the contrary. This guidance provided in a notice from 2005 would benefit from being more prominently stated in current instructions.

A taxpayer may use Form 5329 Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts, attached to the personal Form 1040 Individual Income Tax Return to indicate whether a distribution is exempt from the 10% additional tax of Section 72(t)(1) when the distribution is coded “Early distribution, no known exception.” If the distribution is coded “Early distribution, exception applies,” then there is an assumed waiver of the Section 72(t)(1) additional tax without the taxpayer providing Form 5329.

The IRS has issued several notices related to distribution- and repayment-handling topics. Some of those notices are listed here.

- Notice 2024-55: Emergency Personal Expense Distributions and Domestic Abuse Victim Distributions<sup>212</sup> provides Q&A format clarifications and examples.
- Notice 2024-2: Miscellaneous Changes under SECURE 2.0 Act of 2022<sup>213</sup> includes description of evidence required to support an early distribution for an individual with a terminal illness.
- Notice 2007-7: Miscellaneous Pension Protection Act Changes<sup>214</sup> allows an IRA custodian to accept a “reasonable representation” by an IRA owner that a distribution is a qualified charitable distribution.

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<sup>211</sup> See <https://www.irs.gov/pub/irs-drop/n-05-92.pdf>, Paragraph 3.A.

<sup>212</sup> Notice 2024-55 - Emergency Personal Expense Distributions and Domestic Abuse Victim Distributions; <https://www.irs.gov/pub/irs-drop/n-24-55.pdf>.

<sup>213</sup> Notice 2024-02 - Miscellaneous Changes under SECURE 2.0 Act of 2022; <https://www.irs.gov/pub/irs-drop/n-24-02.pdf>.

<sup>214</sup> Notice 2007-7 - Miscellaneous Pension Protection Act Changes; See Q.40 <https://www.irs.gov/pub/irs-drop/n-07-07.pdf>.

- IRS Fact Sheet 2024-19: Disaster relief Q&As: Retirement plans and IRAs under the SECURE 2.0 Act<sup>215</sup> referencing Notice 2005-92: Procedural, Administrative, and Miscellaneous provisions regarding Hurricane Katrina Relief.<sup>216</sup>

### *Distribution Repayments*

A taxpayer might, under Section 72(t)(2), repay an amount distributed and file an amended tax return for a prior year to obtain a tax refund of taxes paid in prior years for repaid distributions that had been reported as income. The parameters for repayment are outlined in Section 72(t)(2).

Section 72(t)(2) paragraphs that describe repayment do so by reference to the rules for repayment of birth or adoption distributions under Section 72(t)(2)(H). The draft *2024 Instructions for Forms 1099-R and 5498* indicate repayment codes for distributions made under Section 72(t)(2)(H), (I), (K), (L), & (M). This guidance is welcome. The Form 5498, IRA Contribution Information repayment codes for distributions under Sections 72(t)(2)(I), (K), and (L) are new to these instructions, and currently only in draft form.

A taxpayer may have IRA plans at multiple custodial financial institutions in addition to participating in a qualified retirement plan. Financial institutions have no knowledge or visibility into the IRAs and distribution and repayment transactions at other financial institutions or in other plans. Distributions from one retirement account may be repaid to a different retirement account. The IRS, however, has visibility through their comprehensive receipt of Forms 1099-R and 5498 from filers.

It would also be helpful to have confirmation of whether a distribution that is not subject to the Section 72(t)(1) additional tax might be repaid. For example, if the distribution was from a Roth IRA account or made to an IRA owner older than 59½ the IRS should clarify whether such a distribution (if not a required minimum distribution) may be repaid according to the rules of Section 72(t)(2).

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<sup>215</sup> Fact Sheet FS-2024-19; <https://www.irs.gov/newsroom/disaster-relief-frequent-asked-questions-retirement-plans-and-iras-under-the-secure-20-act-of-2022>.

<sup>216</sup> Notice 2005-92; <https://www.irs.gov/pub/irs-drop/n-05-92.pdf>.

### *Problems and Challenges for IRA Custodians*

Where a qualified retirement plan is limited in both distributing and accepting money, an IRA plan can accept amounts up to the annual contribution limit and the owner can request distributions at will. Applying the same levels of due diligence to both a qualified retirement plan and an IRA can put the IRA custodian in an untenable situation of making judgment on transactions where the custodian has no actual knowledge.

The IRSAC therefore welcomes the clarification in the draft 2024 Instructions for Forms 1099-R and 5498 that many of the new distribution types provided in Section 72(t)(2) should be reported on Form 1099-R as (1) Early distribution: no known exception. It is hoped this will remain in the final version of these instructions expected later in 2024.

Repayments of the distributions described in Section 72(t)(2), must be treated by the taxpayer as a repayment, a contribution or an excess contribution. Whether a payment is acceptable as a repayment is based on knowledge comprehensively known only to the IRS and the taxpayer. The IRA custodian has imperfect information in that repayment transaction and therefore is not able to confidently determine whether the payment can be treated as a valid repayment for reporting purposes. For example, if due to the inability of an IRA custodian to substantiate a repayment claim by an IRA plan owner, the IRA custodian rejects the repayment, this might prevent that taxpayer from making a legitimate repayment to an IRA plan. This reduces the retirement balance in the IRA and gives rise to a tax obligation for the taxpayer that should have been waived if the distribution was characterized as repaid.

The IRSAC does not believe that an IRA custodial financial institution should receive, possess, or interpret the private documents that show information about a terminal illness or details about a victim of domestic violence to prove that a customer had been eligible to make a distribution described by Section 72(t)(2). For example, the documentary evidence described by Notice 2024-02 to support a distribution for a terminal illness is a detailed medical statement signed by an acceptable doctor. Such a statement in a different context would be subject to the

Health Information Portability and Accountability Act (HIPAA) and be subject to privacy and disclosure limitations. An IRA custodian is appropriately not subject to the requirements of HIPAA with respect to their customers. The IRSAC believes that sensitive health-related documents should not be collected nor retained by IRA custodians. Further, an IRA custodian is not qualified to interpret medical statements.

The IRA custodian cannot know whether similar repayments have occurred with other financial institutions or retirement plans. On repayment, the IRA custodian should be permitted to rely on representations by the customer that a repayment satisfies the requirements of Section 72(t)(2) in order for the IRA custodian to accept the repayment and report it on Form 5498 as such a repayment.

### **Recommendations**

Clear and consistent information reporting expectations reduce inquiries to the IRS, promote consistent treatment between taxpayers, and provide IRA custodians surety and confidence to provide correct information reports.

1. Add to the Priority Guidance Plan a project to update current guidance otherwise found in IRS Notice 2005-92 allowing an IRA custodian to rely on reasonable representations by the distributee that a distribution is subject to an exception under Section 72(t)(2)(M) for reporting as (2) Early distribution: exception applies.
2. Expressly allow IRA custodians to accept repayments of distributions permitted to be repaid under Section 72(t) based on a statement by the IRA owner, preferably as a checkbox on a contribution form, that requirements for repayment or recontribution are satisfied.
3. Allow a checkbox or statement from the IRA owner in situations where a statement or other reasonable representation is permitted to indicate the nature of a distribution or repayment. Also provide model language for the checkbox or statement for IRA custodians to use in practice.

4. Continue, at least in the short term, to allow the industry to apply repayment code “BA” for all repayments that until final publication of form instructions have not benefited from a distinct repayment code for use on Form 5498. IRA custodians have been accepting repayments in 2024 with no knowledge that the IRS would publish distinct codes and now months after those transactions occurred, cannot now determine what repayment code should be applied, as that information should be gathered when a repayment occurs. Where the IRS is providing new repayment codes to apply to repayments of distributions under 72(t)(2), allow IRA custodians ample time to update processes and systems to support these new codes, and for IRA custodians to apply their best efforts to implement these codes on future Forms 5498 without fear of penalty for incorrect information reporting until systems may reasonably be updated.
5. Clarify, especially for taxpayer benefit, whether distributions that are not subject to the additional tax described in Section 72(t)(1) might be repaid according to the instructions of Section 72(t)(2). These distributions include for example, those taken by an account owner who is older than 59½ or taken from a Roth account.

## **ISSUE THREE: SECURE 2.0 Act Qualified Tuition Program Transfer to Roth IRA**

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**SOP Mapping:** 1.7.

### **Executive Summary**

The SECURE 2.0 Act Section 126 added Section 529(c)(3)(E) which provides for a new transaction: a special rollover distribution from a 529 Long-Term Qualified Tuition Program (QTP) to a Roth Individual Retirement Arrangement (IRA) account, effective for distributions after December 31, 2023. The requirements in the statute are high level and do not indicate which party is responsible for the activities required by the statute. The IRSAC recommends that the IRS clarify which parties in the transaction of transfer of funds from a QTP to a Roth IRA are responsible.

### **Background**

Rollovers from 529 QTPs to a Roth IRA account include specific qualification requirements and limitations such as a lifetime limit and 529 QTP holding period. It is not clear which party (taxpayer, QTP, or IRA Custodian) is responsible for ensuring the rollover requirements are satisfied.

Section 529(d)(d) requires that the QTP provide reporting to the Roth IRA custodian. The nature, content, and purpose of this reporting is unclear.

From the IRA Custodian perspective as recipient of the special rollover transaction, such rollover is subject to reporting on Form 5498, IRA Contribution Information, and must be received by a trustee-to-trustee transfer. The rollover is subject to the contribution limitations of Section 219(b)(5).

### **Recommendations**

1. Provide official guidance via revenue procedures regarding any considerations that the 529 QTP administrator must apply to evaluating the specific qualification requirements. This includes for example, how to determine whether the plan has been in existence for the minimum 15 years, considering for example that the beneficiary of a QTP may change



- under Section 529(c)(3)(C), and whether the QTP plays a role in ensuring the lifetime limit of \$35,000 is not exceeded.
2. Provide official guidance via revenue procedures that confirms that the role of the Roth IRA custodian is limited to ensuring the annual contribution limits for the IRA plan described in Section 219(b)(5) are not exceeded, that the funds are received as a direct rollover, and that information reporting for these transactions occurs on Form 5498.
  3. Provide guidance regarding content and intended use of the reporting provided by the 529 QTP administrator to the Roth IRA trustee as required under Section 529(d)(2).

## **ISSUE FOUR: Businesses Need Support from IRS Large Corporation Representatives**

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**SOP Mapping:** Objective 1, 1.1, 1.3, Objective 2, 2.2.

### **Executive Summary**

The IRS Taxpayer Services Division (previously known as Wage and Investment) assigns Large Corporation representatives to provide personal assistance on tax account related issues to certain companies designated with a Large Corporate Indicator code. These technicians are instrumental in assisting large corporate taxpayers resolve complex issues. However, some taxpayers are unaware of this service or cannot determine who their assigned representative is. Additionally, some taxpayers experience delays in resolution of critical penalty issues which often times gives rise to more penalty issues simply because the original problem was not resolved in a timely manner. The IRSAC recommends that the IRS reinforce their commitment to the Large Corporate service program and ensure IRS procedures are followed regarding follow-ups and assistance provided to large corporate taxpayers.

### **Background**

According to the IRS, the purpose of the Large Corporation program is to provide a single point-of-contact to help clarify and resolve account-related issues to corporations with continuous tax issues. Specifically, IRM 21.7.1.4.11.1<sup>217</sup> states that the teams' purpose is to help clarify and resolve issues related to:

- Balance Due Modules
- Penalty Issues
- Notice Reviews
- Tax Adjustments (Not related to an examination)
- Misapplied Payments

In business practice, frequent issues arise for even the most careful taxpayers. Often times the rules are such that even when a taxpayer follows them

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<sup>217</sup> IRM, Part 21. Customer Account Services, Campus Contacts for Large Corp Cases; [https://www.irs.gov/irm/part21/irm\\_21-007-001r#idm140471736930608](https://www.irs.gov/irm/part21/irm_21-007-001r#idm140471736930608).

in accordance with instructions, IRS notices are issued, or letters are sent to the taxpayers. For example, TIN mismatches reported on information returns that are corrected following the IRS instructions and timelines, still generate IRS CP2100 Backup Withholding Notices and 972CG penalties. The unnecessary IRS correspondence can be confusing for taxpayers and can lead to negative experiences and financial consequences through no-fault of the taxpayer. Typically, once the proper IRS person is engaged, the issue can be resolved efficiently and equitably for both the IRS and the taxpayer.

Some members of the IRSAC have experienced that when a call is placed to the Cincinnati or Ogden Service Centers inquiring about Large Corporation support the response time is not what the IRS procedures require or expect. In addition, on the letters confirming the designated Large Corporation representative, the IRS indicates a 30 to 45 day response time for calls or questions to the representative. These timelines do not correspond to the timelines in which the IRS systems generate additional penalties. Members of the IRSAC have experienced that while waiting for attention by the Taxpayer Services Division, the IRS may incorrectly execute a levy or reallocate monies between IRS taxpayer accounts, such as amounts designated for Forms 941, 945 and 1042. Communication and access to knowledgeable personnel is critical in resolving complex tax issues for large corporate taxpayers. However, other than the IRM, information about the Large Corporation technician program is not publicized to the users of this important service.

Additionally, for some large corporate taxpayers despite being assigned a Large Corporate technician, not all listed taxpayer issues can be resolved by that person. This creates an inefficient back and forth for the taxpayer and the IRS, and delays resolution.

For example, an IRSAC member reported that their Large Corporate technician was unable to determine whether the IRS had received a timely submitted response from the taxpayer to a notice. The IRS then executed a demand for payment followed shortly by a levy notice. Taxpayer Services executed a "collection hold" while the taxpayer re-sent the notice response. Taxpayer

Services again could not confirm the notice was received by the IRS. Eventually, the taxpayer assumed the IRS had received the response because the status of the collection notices was reported changed by Taxpayer Services. These exchanges took many calls and many hours of time between Taxpayer Services and the taxpayer because the Large Corporate technician could not view statuses in the systems in order to be able to respond to the taxpayer with certainty.

### **Recommendations**

1. Examine and address barriers preventing Large Corporate technicians from adhering to service level response times to improve resolution of taxpayer issues and to prevent new and unnecessary issues from arising.
2. Create a publication with information on how to determine if your company is eligible for the program, how to identify your technician, what can be addressed with your technician and procedures and expectations of both the IRS and taxpayers for engaging in the program. Such publication should include information about:
  - a. How to obtain copies of 941, 945 or 1042 transcripts, ideally for multiple EINs at the same time.
  - b. How to request a 60-day hold on a penalty when a taxpayer-dispute or inquiry has been submitted and a balance is due.
  - c. Obtaining status of outstanding Failure to Deposit penalties including providing CP568 (detailed report of how the IRS applied payments and liabilities) etc.
  - d. Status of Notice 972CG, Notice of Proposed Civil Penalty and other related information reporting penalty processes, including whether any reasonable cause abatement request is received and under consideration by the IRS.

## **ISSUE FIVE: Form 15397, Application for Extension of Time to Furnish Recipient Statements, Needs Updating to Include Additional Reasons**

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**SOP Mapping:** Objective 1, 1.7.

### **Executive Summary**

The IRS published Form 15397, Application for Extension of Time to Furnish Recipient Statements<sup>218</sup> (the Form) in November 2023 without updating the General Instructions for Certain Information Returns (2023)<sup>219</sup> publication. With the release of this new form, it was unclear whether the IRS would honor the previous practice of faxing a free-form letter for the Extension of Time or if the new form was required for 2023 tax reporting purposes. Most issuers of information returns faxed a free-form letter, but many were uncertain of the permissible approach for Extension of Time. Upon review of Form 15397, the IRSAC discovered that Line 5 omitted many commonly used reasons for information return preparers to request an extension.

The IRSAC offers recommendations to make Form 15397 more useful to issuers of information returns including, providing digital methods to submit the requests rather than fax, and recommending that the IRS update various related annual information return publications to explain this new form and related process.

### **Background**

In the past, issuers of information returns have requested an extension of time to furnish recipient statements by writing a free-form letter to the IRS which included information about the entity making the request and the reasons for the extension. The requirements related to these extensions of time are generally found in the annual General Instructions for Certain Information Returns publication. Although this publication indicates that the IRS may approve or deny requests, in practice requestors do not receive responses from the IRS, so the

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<sup>218</sup> Form 15397 (Rev. Feb. 2024), Application for Extension of Time to Furnish Recipient Statements; <https://www.irs.gov/pub/irs-pdf/f15397.pdf>.

<sup>219</sup> 2023 General Instructions for Certain Information Returns; <https://www.irs.gov/pub/irs-prior/i1099gi--2023.pdf>.

industry has generally treated the lack of response to be an acceptance of the extension request.

In November 2023, the IRS released Form 15397, Application for Extension of Time to Furnish Recipient Statements, which was to be used for filing extension of time for 2023 information returns. In February 2024, the Form<sup>220</sup> was updated and released again. The IRSAC believes this version of the Form was missing key information that could have resulted in low industry adoption of the form.

*Line 5 criteria need to be expanded*

Line 5 contained limited criteria for requesting an extension of time to issue recipient statements and is inadequate for broad industry adoption for industry use. The instructions for Line 5 state: "If you are requesting an extension to furnish copies of information returns to recipient(s), you must meet one of the following criteria. Check the applicable box that describes your need for an extension. For all other information returns, you do not need to complete this box." The available options are limited to:

1. The transmitter suffered a catastrophic event in a federally declared disaster area that made the transmitter unable to resume operations or made necessary records unavailable,
2. Fire, casualty, or natural disaster affected the operation of the transmitter,
3. Death, serious illness, or unavoidable absence of the individual responsible for filing the information returns affected the operation of the transmitter,
4. The transmitter was in the first year of establishment, and
5. The transmitter did not receive data on a payee statement such as Schedule K-1, Form 1042-S, or the statement of sick pay required under section 31.6051-3(a)(1) in time to prepare an accurate information return.

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<sup>220</sup> Form 15397, Application for Extension of Time to Furnish Recipient Statements; <https://www.irs.gov/pub/irs-pdf/f15397.pdf>.

These responses did not encompass the wide variety of valid reasons for which an extension may be requested to furnish recipient statements by the due date. Further, the Form types cited for the fifth checkbox were not appropriate for the Forms W-2 and 1099-NEC referenced on the instructions for this line on the Form.

In August of 2024, the IRS released a third version of Form 15397. This version of the Form removed all reasons criteria from Line 5, replacing it with a blank section for requestors to “Describe...[their]...need for an extension to furnish recipient(s) copies of Information returns.” This is in-line with the IRSAC’s recommendations to the IRS for improving the Form this year.

*Submission methods need to be updated*

The current method for submitting free-form written requests for extension of time and the new Form 15397 is via fax. Although the IRS may receive fax information digitally via an email, many issuers no longer have access to a physical fax machine, digital fax technologies, or fax service providers. The IRSAC recommends that the IRS add Form 15397 to the Filing Information Returns Electronically (FIRE) and Information Returns Intake System (IRIS) so that issuers may request extensions of time to send recipient statements electronically. Currently, when an issuer seeks to request an extension of time to file information returns beyond the due date, these systems are leveraged to receive an automated version of Form 8809, Application for Extension of Time to File Information Returns.<sup>221</sup> Streamlining the extensions of time requests for recipient statements to this solution would alleviate the burden of issuers needing to locate fax technologies for submitting these requests and would offer the IRS a secure and automated way to receive these requests.

*Response processes need to be clarified*

Form 15397 contains many references to “approved extensions.” The General Instructions for Certain Information Returns (2023)<sup>222</sup> indicates that if the

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<sup>221</sup> Form 8809, Application for Extension of Time to File Information Returns; <https://www.irs.gov/pub/irs-pdf/f8809.pdf>.

<sup>222</sup> 2023 General Instructions for Certain Information Returns; <https://www.irs.gov/pub/irs-prior/i1099gi--2023.pdf>.

IRS approves the request, the extension is granted for 30 days. However, in practice the IRS neither confirms nor denies these extension requests of issuers.

For 2023 returns, issuers that submitted the free form letter are not confident that the letter was accepted given the new Form was issued in November 2023 (before the filing season) and because the IRS neither confirmed nor denied their extension requests. The IRSAC notes that based on the language provided in Treas. Reg. § 1.6081-1(b)(1)<sup>223</sup> a free form letter that meets the criteria otherwise set forth in the publication should have been acceptable for 2023 returns.

The IRSAC recommends that the IRS update the General Instructions for Certain Information Returns (2024)<sup>224</sup> to include information about the new Form 15397. The information should include whether written statements (in lieu of Form 15397) will be accepted in the future. Additionally, the IRS should include information about whether issuers should expect a formal approval or denial of these requests, including whether the absence of a response means the issuer has been granted an automatic 30-day extension.

If the IRS does not intend to include information about a response process, then the IRSAC recommends that the IRS remove the various references to “approved extensions” on Form 15397 in order to eliminate the expectation that any response will be received. Similarly, references to “approved responses” should be removed from the General Instructions for Certain Information Returns (2024) and the publication should be updated with information about whether an automatic 30-day extension has been granted when no response is received from the IRS related to these extension requests.

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<sup>223</sup> Treas. Reg. § 1.6081-1(b)(1) provides some guidance on the issue of accepting a letter versus the use of an available form: “...A taxpayer desiring an extension of the time for filing a return, statement, or other document shall submit an application for extension on or before the due date of such return, statement, or other document. If a form exists for the application for an extension, the taxpayer should use the form; however, taxpayers may apply for an extension in a letter that includes the information required by this paragraph.”

<sup>224</sup> 2024 General Instructions for Certain Information Returns; <https://www.irs.gov/instructions/i1099gi>.



## **Recommendations**

1. Add Form 15397 in the FIRE and IRIS systems as an alternate option for issuers to submit the form.
2. Update the instructions for Form 15397, the General Instructions for Certain Information Returns (2024) publication, and all other applicable publications and forms with information about whether extension requests will be approved or denied, and the method by which such communications will be provided. If this action is not taken, remove or clarify any references to "...approved extensions..." in the Form 15397 instructions and the General Instructions for Certain Information Returns (2024) publication.

## **ISSUE SIX: Electronic Recipient Statement for Form 1099-DA, Digital Asset Proceeds From Broker Transactions**

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**SOP Mapping:** 1.2, 1.6

### **Executive Summary**

The final regulations<sup>225</sup> on the reporting of digital asset sales and exchanges does not address how a recipient statement must be delivered to the recipient. Further, draft instructions for the issuer for Form 1099-DA are silent on the delivery mechanism for the Form 1099-DA. Brokers are left to assume that the current Section 6045 regulations, which require brokers to mail recipient statements to the last known address of the broker, will apply to the Form 1099-DA, or they can follow the procedures as laid out in Section 4.6 of Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns, for electronic delivery of recipient statements when the broker obtains consent.<sup>226</sup>

### **Background**

Treas. Reg. § 1.6045-1(k) requires brokers to mail recipient statements to the last known address of the broker. The final regulations for Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions released on June 28, 2024 (T.D. 10000), do not address how statements must be delivered to recipients. Brokers are left to apply the current Section 6045 requirement to recipient statements for digital asset transactions.

Public Law 107-147<sup>227</sup> authorized issuers of Forms 1099 to electronically furnish such statement (without regard to any first class mailing requirement) to any recipient who has consented to the electronic provision of the statement in a

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<sup>225</sup> T.D. 10000 (July 9, 2024), Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions; <https://www.federalregister.gov/documents/2024/07/09/2024-14004/gross-proceeds-and-basis-reporting-by-brokers-and-determination-of-amount-realized-and-basis-for>.

<sup>226</sup> IRS, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns; <https://www.irs.gov/pub/irs-pdf/p1179.pdf>.

<sup>227</sup> P.L. 107-147 (March 9, 2002), Job Creation and Worker Assistance Act of 2002, Title IV, SEC. 401.

manner similar to the one permitted under regulations issued under Treas. Reg. § 31.6051-1(j), or in such other manner as provided by the Secretary. Procedures for electronic delivery of recipient statements are laid out in Section 4.6 of Publication 1179.

It is impractical to require digital asset brokers to develop an affirmative consent system for recipients to opt into receiving electronic Forms 1099 because almost all digital asset brokers conduct virtually all transactions with their customers electronically. Issuing statements via the U.S. Postal Service is also unmanageable given the large number of Forms 1099-DA that are expected to be issued with many recipients potentially receiving hundreds or thousands of such forms annually. Digital asset brokers do not send physical mail to their clients for any interactions. Generally, these brokers communicate with their clients solely through electronic means. Each customer has therefore, either actually or de facto, consented to electronic receipt of all communications. In addition, the current burden estimates contained in the final regulations for reporting digital asset sales does not factor in the high cost and environmental impact of printing and mailing up to eight billion Forms 1099-DA.<sup>228</sup> Preliminary evaluation of the draft Form 1099-DA requirements by the firm of one IRSAC member indicates that there are individuals who will receive thousands of Forms 1099-DA.

While we understand that the IRS intends to allow for the use of consolidated forms in the 2025 Publication 1179, the digital asset industry requires that both the Form 1099-DA and Publication 1179 be published in final form in order to begin to develop systems necessary to perform any consolidation. The IRS typically recognizes a minimum 18-month programming window after publications are finalized. There may not be enough time to develop a consolidated form for the 2025 Tax Year.

Further, the granularity of the Form 1099-DA reporting will reduce any value of consolidation. Programming consolidated statements requires more intensive

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<sup>228</sup> Jonathan Curry, "IRS Prepping for at Least 8 Billion Crypto Information Returns," *Tax Notes*, Oct. 26, 2023; <https://www.taxnotes.com/featured-news/irs-prepping-least-8-billion-crypto-information-returns/2023/10/25/7hhdp>.

logic and resources than individual forms 1099-DA. For example, Box 10 "Digital asset is a noncovered security because" and Box 12b "If transferred in, provide transfer-in date" of the draft Form 1099-DA (dated August 8, 2024) require that this information be provided for each lot.<sup>229</sup> This logic requirement limits the benefit of consolidated statements given the large volume of uncovered lots for which the industry will need to issue Forms 1099-DA.

### **Recommendations**

1. Provide guidance to allow brokers who facilitate trades of digital assets through electronic means, such as a smartphone, tablet, computer, or similar technology, to furnish written statements to a recipient electronically without requiring the recipient to first consent separately to receive such statements electronically. Taxpayers have demonstrated they have the means to access information return statements electronically because they conduct all their transactions and receive current communications electronically from the digital asset broker. These two factors combine to satisfy the requirements of IRS Publication 1179 for electronic delivery of Forms 1099-DA, based on P.L. 107-147. Update Publication 1179 to reflect that separate consent is not required to be obtained from the recipient for the provision of electronic versions of Form 1099-DA.
2. Consider opportunities, such as aggregated statement reporting, to reduce the number of Forms 1099-DA that must be issued. The current burden estimates do not factor in the high cost and environmental impact of printing and mailing up to eight billion Forms 1099-DA. This action should be taken along with electronic delivery of these forms.

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<sup>229</sup> Also see the comment letter on the draft filer instructions (dated Sept. 30, 2024) for Form 1099-DA, that the IRSAC submitted to the IRS on October 11, 2024 (also included in Appendix A of this report).

## ISSUE SEVEN: Streamline E-Filing of Forms 1042

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**SOP Mapping:** 1.2, 4.1, 4.2, 4.3.

### **Executive Summary**

Beginning with 2024 returns, U.S. withholding agents are required to electronically file (e-file) with the IRS the Form 1042 return, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*. T.D. 9972 Electronic-Filing Requirements for Specified Returns and Other Documents regulations were finalized in 2023 reducing the e-file threshold from 250 returns to 10 returns.<sup>230</sup> The Form 1042 return must be filed through the Modernized e-File (MeF) system. A filer that desires to file these returns directly with the IRS rather than to engage a third-party filing processor can obtain the schema from the IRS and create a programming solution to e-file the Form 1042 return.<sup>231</sup>

Organizations that are not professional tax preparers are finding that the process to gain access to MeF is a non-trivial exercise and organizations might be forced to pay a third-party to file with the IRS a return which is not otherwise complex.

The IRSAC understands the benefits to the IRS and to the taxpayer of electronic filing and commends the IRS for strides to modernize tax filing systems. The Form 1042 return is different from other tax returns filed by an organization because the Form 1042 return does not report an income tax liability and so might not be handled through the tax department of an organization.

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<sup>230</sup> T.D. 9972 (Feb. 23, 2023), Electronic-Filing Requirements for Specified Returns and Other Documents; <https://www.federalregister.gov/documents/2023/02/23/2023-03710/electronic-filing-requirements-for-specified-returns-and-other-documents>.

<sup>231</sup> While Form 945 is not yet required to be e-filed, the IRS might require e-filing of this form in the future, and the concerns outlined here will apply as well to any requirement to file Form 945 via MeF. Forms 1094-C and 1095-C are another collection of information returns that require electronic filing by more employers due to the threshold reduction from 250 forms to 10 forms mentioned above. These Forms 1094-C and 1095-C are filed through the Affordable Care Act (ACA) Information Returns (AIR) filing system, also an XML-based submission system. Similar to MeF, the AIR interface is designed as indicated by IRS Publication 5165 for “software developers and transmitters” while the operational teams that administer the Forms 1094-C and 1095-C are not software or even Tax teams but are rather in Payroll and Benefits teams at employing organizations. Such teams, as discussed elsewhere in this issue, have limited technical skill to develop a software solution to support the now-required e-filing.

MeF requires that the Form 1042 return be encoded in eXtensible Markup Language (XML), a tag-organized data file format. An organization will typically require information technology involvement to populate the XML schema for the return or engage a third-party return filer to create and submit these returns.

### **Background**

Until tax year 2023, business taxpayers have filed the Form 1042 return on paper. This appeals to non-tax professionals and taxpayers with a small number of returns to file. Beginning in 2024, T.D. 9972 required Form 1042 to be filed electronically by any organization filing more than a sum total of 10 information returns of any type. The IRS generously provided an additional year to meet this new requirement so electronic filing of the Form 1042 return is required in 2025 for 2024 transactions. The IRSAC believes that this additional one-year delay is not enough time and requests a further extension of time to implement the change and MeF process simplification.

That filing is changed from paper to e-file means that in previous years an accounts payable professional, for example, was able to complete the fillable PDF form at the IRS internet site, print, sign, and mail for the cost of a \$0.70 stamp. That same person must now perform the make-or-buy analysis to either build the ability to create the Form 1042 return in XML-format according to the schema provided by the IRS and establish the mechanism to both submit the return annually, and perform annual testing required by MeF, or pay a third-party to create and file the return. For one IRSAC member that decided to “buy” this functionality, this single filing came at an annual cost of \$2,000 to add this reporting for one Form 1042 return to an existing vendor relationship and required six months to execute the vendor engagement. For another previous IRSAC member attempting to “make” the functionality, the project has so far taken 13 months and required engagement of information technologists. The IRSAC suggests that these timeframes and costs to both “make” and “buy” are too high. Also, these types of costs were likely not considered in the burden estimates provided in the final T.D. 9972 regulations.

The IRS has alternative filing interfaces in the Information Returns Intake System (IRIS) and Filing Information Returns Electronically (FIRE). These interfaces allow taxpayers to upload files. IRIS also allows the organization to enter tax return information through an internet interface and submit through that interface. Information returns filers are familiar with the FIRE system and are becoming more familiar with newer IRIS. Both of these interfaces have a comparatively low cost of participation as they are geared toward the multitude of information return filers. MeF on the other hand is designed for professional return filers and organizations with the technical wherewithal to forego engaging a third-party professional return filer.

The IRS provides two publications to support a taxpayer endeavoring to “make” the MeF filing functionality: Publication 4163: Modernized e-File (MeF) Information for Authorized IRS e-File Providers for Business Returns, and Publication 4164: Modernized e-File (MeF) Guide for Software Developers and Transmitters. These publications are targeted at information technology professionals such as software programmers. A typical tax or accounts payable professional would struggle to create the ability to file through MeF without information technology professional assistance, unless the IRS provides simplified directions aimed at those accounts payable professionals to perform the limited tax return filing being attempted through MeF. A simplified interface resembling IRIS would also be a welcome enhancement to MeF.

To use the MeF functionality, form filing is performed by converting the paper return to a dataset based on a unique XML schema that the IRS must provide to the requestor. While PDF “save as XML” exists, “save as” does not create XML that is compliant with MeF. Publication 4164 generically describes an XML schema for the myriad forms filed through MeF in a way that is helpful to a software programmer or tax forms filing provider but is not targeted enough for the accounts payable professional that must transcribe the contents of a paper return into the complex XML format. The accounts payable professional attempting to encode a Form 1042 return into XML format using either a text editor or an XML editor is not provided information in the available publications to confidently

perform this encoding because the provided information is geared toward programmers.

According to Publication 4163, the XML schema should be received by the organization through the Secure Object Repository (SOR). The former IRSAC member mentioned above received the schema via email and not through the SOR. Organization firewalls often block content such as zipped files or an XML schema so providing via SOR is a preferred delivery method. There were several interactions between that tax professional and the IRS and other industry experts for that organization to finally receive the XML schema. The links on the IRS website do not lead to the ability to download the schema. These various links were described as “circular,” and not helpful to downloading the schema.

A further requirement of the accounts payable professional attempting to perform Form 1042 return filing through MeF is annual testing through the Assurance Testing System (ATS). Publication 1436, Assurance Testing System (ATS) Guidelines for Modernized e-File (MeF) Individual Tax Returns for Tax Year yyyy describes the testing requirements. An accounts payable professional familiar with the IRIS or FIRE systems for submitting information returns must engage with this third system of MeF and must also perform annual testing to remain eligible to submit even a single Form 1042 return, while annual testing for IRIS and FIRE is not required.

Another IRSAC member shared his experience with e-filing certain required returns where the IRS interface refuses to accept the information return submission, frustrating the attempts of the taxpayer to file returns that the taxpayer insists are correct. The IRS should accept returns from filers, allowing the filing taxpayer to help the IRS understand how a return is correct. With the larger number of Form 1042 return filings expected, the IRS should not be overly strict regarding return acceptance.

Finally, an additional complexity to e-filing the Form 1042 return involves the attachments required to accompany the return. Many of these attachments, such as Forms 1042-S received by the organization, are in the possession of the IRS after those forms are filed by the issuer. In previous years, the paper copy of Forms



1042-S were included with the paper filing of the Form 1042 return submission. These Forms 1042-S must now be encoded for the Form 1042 return filing by transcribing these information returns into XML. The IRS will already have these forms (through FIRE submissions) so it would benefit the Form 1042 filer to forego retyping the data from these forms in favor of an automated forms-matching function whereby the IRS matches Form 1042-S content based on key fields compared to information reported on the Form 1042 return.

### **Recommendations**

1. Suspend the e-file mandate for U.S. withholding agents to file the Form 1042 return electronically until the IRS creates a simplified filing alternative for the Form 1042 return. Alternatively, grant return filers additional time through an exemption from the requirement to electronically file Form 1042 returns to allow information return filers that are not professional return filer organizations the time needed to make or buy an MeF solution to file the Form 1042, and perform the mandated ATS testing.
2. Ensure that the Form 1042 schema is delivered to the organization as described by Publication 4163, through the SOR.
3. Develop an IRIS-like interface or fillable form upload to simplify return submission for the Form 1042 return to prevent XML encoding errors and allow forms submission by organizations that choose not to engage a third-party filing provider. A simplified filing interface should also consider the attachments required to accompany the Form 1042 return.
4. Provide simplified MeF enrollment and submission instructions intended for the non-tax-technical, non-information-technology professional such as an accounts payable professional that is attempting to enroll in MeF and submit the Form 1042 return. The IRS should update the technical guide with a comprehensive XML example representing a Form 1042 return submission. Alternatively, this example could accompany delivery of the 1042 schema to the organization.

5. Minimize the requirement to annually test the ability of an organization to file through MeF where the filing requirement is *de minimis*, such as where the organization is filing only Forms 1042, or only returns for the organization, in contrast to professional forms filing companies.
6. Provide systematic ingestion rules for e-filing that default to accepting rather than refusing to accept returns, only rejecting returns that are impossibly incorrect. Where a return is rejected, provide meaningful feedback to the filer. The feedback should be understandable to a non-technical filer.



**INTERNAL REVENUE SERVICE ADVISORY COUNCIL**

**Large Business & International Subgroup Report**

**Katrina Welch, Subgroup Chair**

**Dawn Rhea, Subgroup Vice Chair**

**Andrew Bloom**

**Anthony Massoud**

**Thomas Wheadon**

## INTRODUCTION

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The 2024 IRSAC Large Business & International (LB&I) Subgroup consists of five members, including CPAs and attorneys, representing accounting firms and in-house tax departments, with law firm and government experience. The subgroup members practice in the areas of corporate finance, high net worth individuals, international businesses, real estate, partnerships, trusts, foundations and compliance, policy, controversy, planning, mergers and acquisitions, green and renewable energy credits, quality risk management, and reporting.

The Large Business and International (LB&I) Division is responsible for tax administration activities for domestic and foreign businesses with a United States tax reporting requirement and assets equal to or exceeding \$10 million as well as the Global High Wealth and International Individual Compliance programs. Its vision, as a world class organization responsive to the needs of its customers in a global environment while applying innovative approaches to customer service and compliance, is to apply the tax laws with integrity and fairness through a highly skilled and engaged workforce, in an environment of inclusion where each employee can make a maximum contribution to the mission of the team.

The LB&I subgroup valued the opportunity to work collaboratively with LB&I Commissioner Holly Paz, Deputy Commissioner Jennifer Best, Division Counsel Robin Greenhouse, Special Assistant to the Commissioner Mireille Khoury, and other BOD officials. We also especially appreciated the assistance of Anna Millikan, IRSAC Program Manager, Stephanie Burch LB&I Subgroup Liaison, and Shawn Hooks, LB&I Communications Public Affairs Specialist.

Recommendations prepared by the LB&I Subgroup:

1. Streamlining LB&I Examination Procedures (Requested by the LB&I Division)
2. Processing of Net Operating Loss Carryback Claims Under the CARES Act of 2020 and Erroneously Rejected Claims (Raised by the IRSAC)

3. Revising and Expanding the Streamlined Domestic Offshore Procedures (Raised by the IRSAC)
4. Simplify Reporting for Individuals Electing to be Taxed Under Section 962 at Corporate Rates on Income Inclusions (Raised by the IRSAC)

The first topic was requested by the LB&I Division and the others were initiated by the LB&I Subgroup and accepted by the IRS.

## **ISSUE ONE: Streamlining LB&I Examination Procedures**

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**SOP Mapping:** 2.2, 2.4.

### **Executive Summary**

The IRS LB&I Division (LB&I) significantly restructured its LB&I Examination Process (LEP) in 2016 and further updated it in 2018 with the goals of voluntary compliance, along with effective, efficient, fair, and transparent examinations. LB&I divided LEP into three phases: planning, execution, and resolution. LEP provides best practices for both the LB&I exam team and taxpayers (or their representatives). Despite providing these best practices and stated goals, LEP in execution falls short of its best practices and stated goals. The LB&I Division asked the IRSAC for suggestions on improving LEP.

To achieve the stated goals of LEP, LB&I should: 1) evaluate the need for the Acknowledgement of Facts (“AOF”) Information Document Request (“IDR”), identify opportunities for process improvement, and provide training; 2) provide training to managers on transition planning for LB&I exam team members rolling off or being reassigned; 3) provide training on LEP with focus on open and forthcoming communication with taxpayers and timeliness; and 4) renew focus on material issues in the exam (*e.g.*, focus on permanent items rather than those that reverse or are eliminated over time).

These LEP changes will increase efficiency, transparency and effectiveness of LB&I exams saving time for both taxpayers and IRS exam teams.

### **Background**

The IRS conducts examinations of taxpayers’ books and of witnesses mainly under the authority of Sections 7601 and 7602. LB&I examinations cover the largest taxpayers, *i.e.*, domestic and foreign businesses with United States tax reporting requirements and assets equaling or exceeding \$10 million, and Global High Wealth and International Individuals.

In 2016, LB&I restructured its examination process as detailed in Publication 5125, Large Business & International Examination Process,

emphasizing efficiency, cooperation, responsiveness, fairness, and transparency between LB&I exam teams and taxpayers (or their representatives).

Specifically, Publication 5125 provides the following set of best working practices for both LB&I exam teams and taxpayers (or their representatives):

*LB&I Exam Teams*

1. Work transparently in a collaborative manner with the taxpayer to understand their business and share the issues that have been identified for examination.

2. Engage the taxpayer in the development of the audit steps and potential timeline appropriate for the issues selected in the examination plan; provide a final copy to the taxpayer.

3. Follow the Information Document Request (IDR) procedures by:

- Discussing the IDRs with the taxpayer before issuance to ensure that requests identify the issue and are properly focused.
- Timely reviewing IDR responses and providing feedback to taxpayers regarding the adequacy of their response.
- Following the LB&I IDR enforcement process if complete responses are not received by the agreed date.

4. Keep the taxpayer informed of the status of each issue on a regular basis.

5. Provide written documentation of all relevant facts, seek taxpayer acknowledgement, and if the issue is unagreed, appropriately document all disputed facts.

6. Apply the law to the facts in a fair and impartial manner.

7. Prepare well-developed Notices of Proposed Adjustment: Form 5701. Notice of Proposed Adjustment and Form 886-A, Explanations of Items.

8. Resolve issues at the earliest appropriate point using the appropriate issue resolution tool.



### *Taxpayers (or their Representatives)*

1. Work transparently with the exam team by providing a thorough overview of business activities, operational structure, accounting systems, and a global tax organizational chart.

2. Identify personnel for each issue with sufficient knowledge who can provide input when establishing initial audit steps, timelines, and actively assist in the development of the issues selected by the exam team.

3. Follow the IDR procedures by:

- Reviewing and discussing IDRs with the issue team before issuance to ensure that they are properly focused and identify the issue.
- Working with the issue team to reach a reasonable response date for each IDR.
- Provide timely written responses to all IDRs issued, including work papers and supporting documents as requested.

4. Collaborate with the issue team to arrive at an acknowledgment of the facts for unagreed issues; provide support for any additional or disputed facts.

5. To foster early resolution, respond timely to each Form 5701 by providing a written legal position for issues in dispute.

6. Resolve issues at the earliest appropriate point using an issue resolution tool.

During the LEP planning phase, the exam team determines and incorporates the scope of the exam into the issue focused exam plan. The LB&I exam team and taxpayer (or their representative) hold the opening conference. The LB&I exam team explains its LEP processes and procedures and asks initial questions about the taxpayer.

The execution phase of LEP focuses on factual development through the IDRs, attempts to resolve factual differences, application of law to facts, issue development, understanding tax implications of the issues, and issuing Notices of Proposed Adjustments (“NOPAs”) documenting LB&I’s legal positions. During the execution phase, the exam team may not appropriately narrow the IDRs issued to relevant and required information. Taxpayers often object to the scope, citing the

IRM, and requesting conferences for discussions that should have happened prior to issuance of any IDR.<sup>232</sup> Furthermore, exam teams may insist on a specific document or information rather than accepting the information that taxpayers maintained. If the exact document requested in the IDR is not as expected, instead of accepting a similar alternative, such substantiation might be dismissed in its entirety (with the exam team possibly indicating later that a taxpayer failed to provide documentation because the exam team would not accept any alternative proof). The IRM instructs on this matter stating that examiners “seldom have all of the information they would like to have to definitively resolve an issue” but they are still “expected to arrive at a definite conclusion by a balanced and impartial evaluation of all the evidence.”<sup>233</sup>

Additionally, during the execution phase of LEP, the LB&I exam team requests taxpayers to confirm the fact findings in an “AOF” IDR. The AOF IDR documents relevant facts whether favorable to the taxpayer or to the IRS to ensure they are considered before issuance of NOPAs. Taxpayers may agree, provide additional facts, clarify facts, dispute the facts or refuse to respond to the AOF IDR altogether. Refusing to respond to an AOF IDR is not subject to the IDR enforcement process but is only noted in the NOPA when issued. The resolution phase of LEP endeavors to reach agreement on each examined issue and for those that remain unagreed issue NOPA(s).

During these phases of LEP, LB&I exam team members may be moved to special assignments, reassigned to other exams, or retire. These events result in lost exam knowledge, increased time to conduct the exam and frustration on the part of taxpayers and LB&I exam teams. Many times, taxpayers are not made aware of the change in exam team membership and new exam team members ask for information that has previously been provided or explained.

Publication 5125 and Internal Revenue Manual Part 4.46 emphasize collaboration, efficiency, responsiveness and transparency between taxpayers

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<sup>232</sup> See IRM Exhibit 4.46.4-1(i) that specifically calls for “a draft IDR” for discussion with the taxpayer.

<sup>233</sup> See IRM 4.10.7.4, Arriving at Conclusions.

and LB&I exam teams in all phases of LEP. To achieve the stated goals of LEP, the IRSAC makes the following recommendations.

### **Recommendations**

1. *Evaluate the need for the Acknowledgement of Facts IDR and opportunities for improving the process:* The LB&I Examination Process (LEP) should be evaluated to determine the need for the AOF IDR. Focus of the evaluation of the AOF IDR should be on opportunities to shorten the timeframe of LEP as well as reduce burden on both the IRS and taxpayers.
2. *Provide Transition Plans for Changing Exam Team Members:* Prior to LB&I exam team members transitioning from an ongoing exam, the transitioning exam team member should review the exam file with the new exam team member(s). Furthermore, the new exam team members along with the transitioning members should discuss the team change with the taxpayer and include in such discussions a transition plan to maintain the exam timeline, ensure consistency in the LEP and reduce burden on both the taxpayer and LB&I exam team.
3. *Provide Additional Training on LEP:* LB&I should provide additional training to exam teams on LEP focusing on open and forthcoming communication with taxpayers, IDR procedures and substantiation, and timeliness on both the part of the taxpayers and LB&I. Such training should focus on LEP as detailed in IRM 4.46, including open and transparent dialog before the issuance of an IDR or NOPA, tailoring the IDR to the relevant issue(s) being examined, and working with taxpayers on substantiation.
4. *Focus on Material Issues:* Such focus should include emphasis on issues that were specifically identified in the risk analysis and evaluate whether material issues should focus on permanent items rather than those that reverse or are eliminated over time.

## **ISSUE TWO: Processing of Net Operating Loss Carryback Claims Under the CARES Act of 2020 and Erroneously Rejected Claims**

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**SOP Mapping:** Objective 1, 4.1.

### **Executive Summary**

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136, March 27, 2020) provided corporate taxpayers with the ability to carry back Net Operating Losses (NOLs) to offset prior years' income, offering crucial liquidity during a challenging economic period. While this provision was intended to provide timely financial relief, the IRS encountered significant delays in processing refund claims, particularly those filed using Form 1139, Corporation Application for Tentative Refund, and Form 1120X, Amended U.S. Corporation Income Tax Return. Despite efforts to resolve the backlog, many businesses faced financial strain due to extended wait times, and some claims were erroneously rejected due to misapplications of the refund statute of limitations (SoL) and discrepancies in IRS records.

These issues highlight the need for improvements in the IRS's NOL carryback processing system, not just to address current problems but to prepare for future refund surges. The IRSAC recommends the issuance a revenue procedure for resolving erroneously rejected claims, as well as the creation of a dedicated, knowledgeable group within the LB&I Division to handle these disputes efficiently. Additionally, the IRSAC recommends the IRS to focus on enhancing digital processing capabilities, implementing contingency plans to handle future surges in claims, and improving internal coordination and transparency.

### **Background**

The CARES Act (P.L. 116-136; "Act") introduced significant, temporary changes to the treatment of Net Operating Losses (NOLs) for corporate taxpayers. The Act allowed a five-year carryback for NOLs arising in tax years beginning after December 31, 2017, and before January 1, 2021.<sup>234</sup> Congress intended this

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<sup>234</sup> Section 172(b)(1)(D).

provision to provide immediate financial relief to businesses by enabling them to offset prior years' income, thereby generating refunds that could support ongoing operations during difficult economic times.

Despite the intended relief, the processing of these NOL carryback claims faced significant delays, particularly with refunds associated with Forms 1139, and 1120X. The Internal Revenue Code requires the IRS to process Form 1139 within 90 days of receipt.<sup>235</sup> However, the IRS has often missed this statutory deadline, with average processing times far exceeding the 90-day requirement. By November 2021, the average processing time for NOL carryback claims had reached 165 days—nearly double the statutory limit. A 276% surge in the volume of NOL carryback claims in fiscal year 2021 compared to the previous year caused this delay in part.<sup>236</sup> The IRS's existing infrastructure, which relies heavily on paper processing for Forms 1139 and 1120X, could not handle such a significant increase in volume, particularly during a period of operational disruption caused by the COVID-19 pandemic.

Corporate taxpayers, many of whom rely on timely refunds to manage cash flow and sustain operations, felt the profound impact of these delays. The uncertainty and prolonged wait times exacerbated financial pressures, forcing some businesses to delay investments or seek costly financing alternatives. Beyond the strain on businesses, these delays also led to substantial interest costs for the government. In fiscal year 2021 alone, the IRS incurred \$61 million in interest due to late refund payments related to NOL carryback claims.<sup>237</sup>

In response to these challenges, the Treasury Inspector General for Tax Administration (TIGTA) and the Government Accountability Office (GAO) each issued reports highlighting the need for systemic improvements in the IRS's

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<sup>235</sup> Section 6411(b).

<sup>236</sup> GAO, *COVID-19: Significant Improvements Are Needed for Overseeing Relief Funds and Leading Responses to Public Health Emergencies*, GAO-22-105291, Jan. 27, 2022, p.4; <https://www.gao.gov/products/gao-22-105291>.

<sup>237</sup> GAO, *COVID-19: Significant Improvements Are Needed for Overseeing Relief Funds and Leading Responses to Public Health Emergencies*, GAO-22-105291, Jan. 27, 2022, p. 5; <https://www.gao.gov/products/gao-22-105291>. It appears that the GAO figure of \$61 million is for interest paid on both individual and corporate refunds that were delayed. The GAO also notes that applications for tentative refund made up about 80% of all carryback interest payments for fiscal year 2021.

processing capabilities.<sup>238</sup> Recommendations from these reports included increasing resources for processing refunds, developing contingency plans to mitigate future delays, and evaluating the effectiveness of temporary measures such as the use of e-fax for submitting refund claims. The IRS has acknowledged these recommendations and reported taking steps to address them, such as reallocating resources and enabling telework for staff involved in processing claims.

The National Taxpayer Advocate (NTA) has also shared similar concerns and recommendations, emphasizing that delays in processing refunds, including NOL carryback claims, had widespread effects on taxpayers and contributed to ongoing financial uncertainty. The NTA called for more robust efforts to modernize the IRS's processing systems and to equip all divisions within the IRS, including LB&I, to handle large volumes of refund claims efficiently.<sup>239</sup>

In addition to the delays in processing carryback claims under the Act, many corporate taxpayers have encountered another issue: erroneous rejections of their claims. These rejections typically arose from two primary issues. First, the IRS has at times, improperly interpreted the relevant SoL, leading to rejections on the grounds that the claims were not timely filed. Second, claims have been rejected because the IRS records for the carryback year do not exactly match the taxpayer's reported income and deductions, even in cases where there is sufficient income to offset the loss.

These erroneous rejections continue to be a problem years after the enactment of the Act. The IRS's inconsistent application of the refund SoL has created confusion and additional burdens for taxpayers, who must then engage in lengthy appeals processes to correct these mistakes.

Under Section 6511(a), taxpayers generally have three years from the time a return was filed, or two years from the time the tax was paid, to file a claim for a

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<sup>238</sup> TIGTA, *Final Report: Delays in Processing Forms 1139 and 1120X for NOL Carrybacks*, August 2022; <https://www.tigta.gov/sites/default/files/reports/2022-09/202235049fr.pdf>.

<sup>239</sup> NTA, *2023 Annual Report to Congress*, Jan. 2024, Most Serious Problem No. 1, Processing; <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/>.

credit or refund. However, Section 6511(d)(2)(A) provides an extended limitation period for refund claims attributable to NOL carrybacks. This special limitation allows taxpayers to file claims for refunds related to NOL carrybacks by the later of:

1. Three years after the due date (including extensions) of the return for the year in which the NOL occurred, or
2. Six months after the expiration of an extended assessment period under Section 6501(c)(4).

The IRS clarified these rules and explained how refund claims related to tax attributes like NOLs can still be timely under the extended statute of limitations.<sup>240</sup> For example, if an NOL carryback results in freeing up a tax attribute—such as a minimum tax credit (MTC) or an investment credit—the taxpayer may be entitled to a refund in a year for which the general SoL has otherwise expired.

However, many NOL carryback claims have been erroneously rejected by the IRS due to a misapplication of these rules. Specifically, claims have been denied because the IRS claimed the SoL for the carryback year had expired, when in fact the SoL for the loss year was still open, thus allowing the adjustment. Many corporate taxpayers find themselves in protracted, costly disputes because the IRS has incorrectly interpreted key provisions regarding the SoL or mismatches in income data. In certain cases, taxpayers have been forced to seek the assistance of the Taxpayer Advocate Service (TAS), placing additional strain on TAS's limited resources.

The ongoing issue of erroneous rejections underscores the need for clear IRS guidance or a revenue procedure that would provide taxpayers with a more efficient means of addressing these disputes. A dedicated group within the IRS, familiar with NOL carryback claims, could help resolve these issues more efficiently by reviewing taxpayer-submitted documentation that supports the timely filing of the claim or demonstrates that sufficient income exists to offset the loss, even in cases of discrepancies with IRS records. Such guidance and additional

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<sup>240</sup> IRS Chief Counsel Memorandum 202023006 (June 5, 2020); <https://www.irs.gov/pub/irs-wd/202023006.pdf>.

resources would reduce the overall administrative burden on both the taxpayers and the IRS and would allow TAS resources to be deployed more effectively.

Moreover, providing clear guidance now would also set a precedent for handling future legislation that might introduce similar NOL carryback provisions, ensuring that these types of errors do not occur in the future.

### **Recommendations**

To address the ongoing challenges related to processing NOL carryback claims under the CARES Act and to ensure preparedness for future scenarios, the IRSAC recommends the following actions.

*1. Issue Revenue Procedure for Erroneously Rejected Claims:*

- The IRS should issue a revenue procedure to address the issue of erroneously rejected NOL carryback claims. This guidance would create a streamlined process for taxpayers to contest rejections related to statute of limitation (SoL) misinterpretations or discrepancies in IRS records. Such a process would eliminate the need for prolonged correspondence and reduce the burden on the TAS.
- In addition, the IRS should create a dedicated team within the LB&I Division that is well-versed in NOL carryback claims. This team would be responsible for reviewing disputed claims and ensuring that the SoLs and carryback rules are properly applied. By dedicating knowledgeable personnel to this area, the IRS can avoid repeated errors and improve the resolution of these disputes.

*2. Develop Contingency Plans for Future Processing Surges:*

- While the backlog of NOL carryback claims from the CARES Act has largely been resolved, it is crucial that the IRS establishes robust contingency plans to handle future surges in refund requests. These plans should include emergency preparedness strategies, such as reallocating resources and rapidly scaling up digital processing



capabilities in the event of future economic disruptions or legislative changes that trigger large volumes of refund claims.

- The IRS should also ensure that customer service representatives and processing staff are cross trained to handle multiple types of claims and refunds, providing flexibility in times of high demand.

3. *Enhance Digital Processing Capabilities and Permanently Implement E-Filing:*

- To prevent the reliance on paper-based processes that contributed to the delays, the IRS should expedite the development and implementation of permanent e-filing solutions for Forms 1139 and 1120X. By transitioning these forms to a fully digital platform, the IRS can ensure faster processing, reduce errors, and improve transparency.
- The IRS should also leverage its existing digital platforms to allow for real-time status updates on NOL carryback claims, enabling taxpayers to track their refund claims more easily and reducing the need for direct correspondence.

4. *Increase Transparency and Accountability:*

- The IRS should establish clear performance metrics to monitor the effectiveness of these changes, particularly in terms of processing times, refund accuracy, and the impact on reducing taxpayer disputes. These metrics should be regularly reported to both internal stakeholders and the public to ensure transparency and accountability.
- In addition, the IRS should monitor the financial impact of delayed refunds, including interest payments, and use these insights to inform resource allocation and future contingency planning.

## **ISSUE THREE: Revising and Expanding the Streamlined Domestic Offshore Procedures**

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**SOP Mapping:** 2.3, 2.4.

### **Executive Summary**

Since the Tax Cuts and Jobs Act (P.L. 115-97, Dec. 22, 2017), the complexity of international information reporting has dramatically increased, particularly affecting taxpayers with interests in controlled foreign corporations (CFCs). Specifically, Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, imposes a significant burden due to its expanded requirements. The indefinite statute of limitations (SoL) on assessment for failure to file these forms creates anxiety among taxpayers, especially publicly traded companies that must decide the extent to which (if at all) to create a reserve for these liabilities for financial accounting purposes. To address these challenges, the IRSAC recommends expanding eligibility for Streamlined Domestic Offshore Procedures (SDOP), revising its Section 965, Treatment of deferred foreign income upon transition to a participation exemption system of taxation, reporting requirements, and adjusting the Title 26 miscellaneous offshore penalty to provide a more effective pathway for rectifying non-willful non-compliance.

### **Background**

The IRS's Inflation Reduction Act Strategic Operating Plan (SOP) seeks to make tax compliance easier, reducing the burden on taxpayers and allowing the IRS to allocate time and resources more efficiently. Key initiatives include quickly resolving taxpayer issues (2.6) and expanding enforcement on complex, high-dollar non-compliance (3.5).<sup>241</sup>

Ever since P.L. 115-97, the international information reporting compliance area has become significantly more complex, particularly concerning interests in CFCs and Form 5471.

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<sup>241</sup> See IRS IRA Strategic Operating Plan FY2023 - 2031; <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

Before 2017, many sophisticated taxpayers considered Form 5471 a relatively straightforward information return. In the absence of a CFC having specific types of low-taxed, passive/moveable income (e.g., Subpart F income) or investments, taxpayers found reporting for U.S. shareholders on Form 5471 not overly burdensome. However, for shareholders of certain foreign corporations, P.L. 115-97 shifted the U.S. from a “worldwide” tax system towards a “quasi-territorial” tax system and introduced the concept of Global Intangible Low-Taxed Income (GILTI). Consequently, nearly all greater than 10% CFC shareholders (including indirect and constructive shareholders) must now recompute a CFC’s income according to U.S. tax principles and disclose a wide variety of tax attributes. This increased the form instructions from 18 pages in 2016<sup>242</sup> to 52 pages in 2024, highlighting the increased complexity and burden on taxpayers.

Minority and indirect shareholders face significant challenges in obtaining the necessary information to accurately complete Form 5471. Determining if a reporting requirement exists can be particularly difficult without knowing the other shareholders’ details, leading to inadvertent non-compliance. The IRS has recognized these challenges to some extent, as evidenced by the introduction of subcategories of Form 5471 filers and adding Schedules K-2 and K-3 for S-corporation and partnership returns. These changes aim to provide shareholders and partners with the information needed to determine their filing obligations and alleviate some reporting burdens. However, reliance on others for this information remains a significant challenge.

Despite P.L. 115-97’s enactment in late 2017, regulations continue to emerge, and Form 5471 has evolved annually, adding to the complexity of international information reporting. Legal uncertainties have further compounded these difficulties. For example, the Supreme Court only recently resolved the mandatory repatriation tax constitutionality under Section 965 in *Moore v. United States*, 599 U.S. \_\_\_\_ (2024), impacting reporting and the taxability of any CFC distributions after 2017. Additionally, in *Farhy v. Commissioner*, in an initial decision, the Tax Court ruled that the IRS did not have the statutory authority to

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<sup>242</sup> Form 5471 for 2016; <https://www.irs.gov/pub/irs-prior/i5471--2016.pdf>.

assess penalties under Section 6038, Information reporting with respect to certain foreign corporations and partnerships,<sup>243</sup> a decision which was subsequently overturned by the D.C. Circuit.<sup>244</sup> This period of uncertainty has created (and continued to create) a challenging environment for taxpayers, tax preparers, and the government alike as the complexity and cost of compliance has increased while the potential for penalties remained unclear.

Non-compliance in this area, particularly with Form 5471, takes on heightened importance due to the SoL. Under Section 6501(c)(8), the time for assessment of any tax related to certain required international information returns (e.g., Forms 5471, 5472,<sup>245</sup> 8938<sup>246</sup>) does not expire until three years after the information is provided to the IRS. This effectively means a single missed or incomplete Form 5471 can expose taxpayers to indefinite audit risks, making the compliance process particularly daunting. This provision, combined with the increasing complexity and scope of financial and tax reporting requirements, can create significant anxiety for taxpayers and preparers. This rampant inadvertent noncompliance, coupled with a desire to correct it, underscores the need for a streamlined compliance mechanism to assist all taxpayers in rectifying prior year non-willful errors or omissions and managing these extensive international information reporting requirements.

Furthermore, determining the full scope of non-compliance resulting from the extensive changes post-2017 presents an IRS challenge. The IRS cannot rely heavily on historical data to predict current compliance issues, unlike in other areas where longstanding patterns can guide enforcement. The indefinite SoL for missing Form 5471 filings exacerbates this issue, and international compliance relies heavily on voluntary reporting. Detecting non-compliance related to foreign activities compared to domestic transactions is inherently more difficult, making robust voluntary compliance mechanisms essential. It is therefore in both the IRS's

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<sup>243</sup> *Farhy v. Commissioner*, 160 T.C. No. 6 (Apr. 3, 2023).

<sup>244</sup> *Farhy v. Commissioner*, 100 F.4th 223 (D.C. Cir. 2024); as of the writing of this report, it is expected the taxpayer will file for a writ of certiorari to the U.S. Supreme Court.

<sup>245</sup> Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation engaged in a U.S. Trade or Business.

<sup>246</sup> Statement of Specified Foreign Financial Assets.

and taxpayers' interests, for there to be options to resolve non-willful non-compliance.

*Current Options for Taxpayers to  
File Delinquent International Information Returns*

Since the closure of the Offshore Voluntary Disclosure Program (OVDP) in 2018, taxpayers have three ways to rectify past non-compliance and mitigate penalties. First, the taxpayer may pursue the Delinquent International Information Return Submission Procedures (DIIRSP).<sup>247</sup> These procedures apply to taxpayers who have not filed one or more required international information returns, such as Forms 5471, 5472, 8938, 926,<sup>248</sup> 3520, and 3520-A.<sup>249</sup> To qualify for the DIIRSP, taxpayers must not be under civil examination or criminal investigation by the IRS and must not have been contacted by the IRS about the delinquent returns. Each delinquent return may be accompanied by a reasonable cause statement, and many taxpayers do elect to attach this reasonable cause statement to the delinquent international information return. However, the IRS states: "During processing of the delinquent information return, penalties may be assessed without considering the attached reasonable cause statement."<sup>250</sup> This process does not appear consistent with the Internal Revenue Manual (IRM), which instructs IRS personnel to consider reasonable cause statements, requires significant effort for taxpayers who wish to address multiple years of non-compliance, and provides little certainty or practical relief from the concerns of taxpayers with unfiled international information returns.

Alternatively, a taxpayer can make a so-called "quiet disclosure", and file a corrected, amended return without drawing attention to any delinquent international information returns. Presumably the IRS wants to discourage taxpayers from using this approach, but in reality, it can often lead to less assessed penalties and burden for taxpayers compared to the DIIRSP.

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<sup>247</sup> DIIRSP; <https://www.irs.gov/individuals/international-taxpayers/delinquent-international-information-return-submission-procedures>.

<sup>248</sup> Return by a U.S. Transferor to a Foreign Corporation.

<sup>249</sup> Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts.

<sup>250</sup> DIIRSP; <https://www.irs.gov/individuals/international-taxpayers/delinquent-international-information-return-submission-procedures>.

Finally, individual U.S. taxpayers or estates of individual U.S. taxpayers can seek relief with the Streamlined Domestic Offshore Procedures (SDOP),<sup>251</sup> if residing within the U.S., or Streamlined Foreign Offshore Procedures (SFOP),<sup>252</sup> if residing outside the U.S. The IRS designed SDOP and SFOP for individual taxpayers with non-willful conduct who failed to report foreign financial assets and income, including interests in CFCs (and the income arising therefrom), and pay all tax due. These procedures generally require filing amended returns for the last three years, FBARs (Report of Foreign Bank and Financial Accounts) for the last six years and paying any taxes and interest due. However, if taxpayers have missed Section 965 inclusions (transition tax), they must address every year since 2017.<sup>253</sup>

To use the SDOP or SFOP, individual U.S. taxpayers or their estates must meet specific criteria:

1. Residency Requirement: Meet or fail to meet the non-residency requirement.
2. Previous Filings: Have previously filed U.S. tax returns (if required) for each of the most recent three years for which the U.S. tax return due date (or properly applied for extended due date) has passed.
3. Unreported Income: Failed to report gross income from a foreign financial asset and pay tax as required by U.S. law and may have failed to file an FBAR or one or more international information returns (e.g., Forms 3520, 3520-A,<sup>254</sup> 5471, 5472, 8938, 926, and 8621<sup>255</sup>) with respect to the foreign financial asset.

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<sup>251</sup> U.S. taxpayers residing in the United States; <https://www.irs.gov/individuals/international-taxpayers/us-taxpayers-residing-in-the-united-states>.

<sup>252</sup> U.S. taxpayers residing outside the United States; <https://www.irs.gov/individuals/international-taxpayers/us-taxpayers-residing-outside-the-united-states>.

<sup>253</sup> Streamlined filing compliance procedures and Section 965; <https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures-and-section-965>.

<sup>254</sup> Annual Information Return of Foreign Trust with a U.S. Owner.

<sup>255</sup> Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

4. Non-Willful Conduct: Such failures must have resulted from non-willful conduct, which includes negligence, inadvertence, mistake, or a good faith misunderstanding of the law.

The requirement that applicants must have unreported gross income from a foreign financial asset is peculiar and unnecessarily restrictive. It effectively forces taxpayers to resolve lower risk non-compliance (i.e. an individual with an interest in a CFC that had a tested loss) through the more burdensome DIIRSP.

Those who use the SDOP specifically also fall subject to the Title 26 miscellaneous offshore penalty.<sup>256</sup> This penalty equals five percent of the highest aggregate balance/value of the taxpayer's foreign financial assets during the years in the covered tax return period and the covered FBAR period. To determine the highest aggregate balance/value, taxpayers are instructed to aggregate the year-end account balances and year-end asset values of all foreign financial assets subject to the penalty for each year in the covered periods and select the highest aggregate balance/value among those years. This penalty covers assets if the taxpayer should have reported them on an FBAR or Form 8938 but did not, or if the taxpayer did not declare gross income from properly reported assets.

These existing options for addressing international tax non-compliance have significant limitations and may deter taxpayers from utilizing them.

Entities with many years of non-compliance face daunting challenges. Eligible taxpayers under the SDOP do not include most entities, forcing entities (other than certain estates) to use the DIIRSP or make a quiet disclosure. This requires filing each year individually, which can be particularly burdensome (and risky) given the difficulty in obtaining historical information, especially from overseas. Entities might consider filing only the most recent six years of international information returns under Policy Statement 5-133, but this approach has risk (and is therefore sometimes undesirable) due to the indefinite SoL on years outside of the six-year compliance period. By coming forward, entities might

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<sup>256</sup>Streamlined filing compliance procedures for U.S. taxpayers residing in the United States frequently asked questions and answers; <https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures-for-us-taxpayers-residing-in-the-united-states-frequently-asked-questions-and-answers>.

increase their exposure and risk without resolving their historical non-compliance comprehensively.

The SDOP can benefit certain individuals (i.e., those with unreported gross income from foreign assets), but it has notable drawbacks:

1. **Three-Year Limitation and Section 965 Inclusion:** While the SDOP typically requires filing only the last three years, this period extends to every year since 2017 having a Section 965 inclusion. This requirement, aimed at capturing pre-2017 earnings and profits (E&P), diminishes the streamlined nature of the process as more years pass, making it less attractive.
2. **Title 26 Miscellaneous Offshore Penalty:** The Title 26 miscellaneous offshore penalty can be significant. This penalty equals five percent of the highest aggregate balance/value of the taxpayer's foreign financial assets, including CFC stock, during the covered periods. For instance, an individual with five years of missed Forms 5471 could face a \$10,000 penalty per year under normal circumstances, potentially waived with reasonable cause. However, under the SDOP, the five percent penalty on the CFC's highest stock value at its highest over the past three years could be substantially higher, with no possibility of a reasonable cause waiver. This could result in a more onerous financial burden compared to regular non-compliance penalties.

### **Recommendations**

1. *Clarify and expand SDOP eligibility:* Extend the benefits of the SDOP to individuals without unreported gross income and entities, allowing them to rectify multiple years of international tax non-compliance in a more streamlined and manageable manner. This inclusion would provide more taxpayers with a structured pathway to compliance, reducing the burden of filing numerous amended returns and encouraging voluntary disclosure.
2. *Revise the Section 965 Reporting Requirement:* Modify the current requirement for taxpayers with Section 965 inclusions to file every year



since 2017. Instead, require filings for 2017 and the most recent three years, making it more accessible and less burdensome for taxpayers.

3. *Adjust the Title 26 Miscellaneous Offshore Penalty*: Narrow the base of the Title 26 miscellaneous offshore penalty (e.g., by excluding assets that did not produce income) and/or cap the penalty so it does not exceed the penalties that would be assessed under the Delinquent International Information Return Submission Procedures (DIIRSP). Alternatively, allow for reasonable cause waivers and/or penalty relief due to first time abate. This adjustment would make the penalty more equitable and less punitive, aligning it more closely with the actual non-compliance risk, taxpayer ability to pay, and the benefits enjoyed by those eligible for the SFOP.

## **ISSUE FOUR: Simplify Reporting for Individuals Electing to be Taxed Under Section 962 at Corporate Rates on Income Inclusions**

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**SOP Mapping:** 1.7.

### **Executive Summary**

The Tax Cuts and Jobs Act (P.L. 115-97, Dec. 22, 2017) brought renewed relevance to Section 962, allowing individual U.S. shareholders of Controlled Foreign Corporations (CFCs) to elect to be taxed at corporate rates on certain income inclusions. However, the current reporting process for this election is complex and burdensome, requiring detailed disclosures across multiple forms.

To simplify the process and reduce compliance burdens, certain forms, including Form 8992, U.S. Shareholder Calculation of Global Intangible Low-Taxed Income [GILTI], and Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, should be expanded and revised to better accommodate the reporting needs of taxpayers making a Section 962 election. These changes will streamline the process, making it more accessible for taxpayers while improving the IRS's ability to manage and monitor these elections effectively.

### **Background**

The Tax Cuts and Jobs Act (TCJA) brought renewed focus to a previously rarely used provision: Section 962, Election by Individuals to Be Subject to Tax at Corporate Rates, which allows individuals to elect to be taxed at corporate rates on certain income inclusions. U.S. lawmakers originally enacted this provision as part of the Revenue Act of 1962 (P.L. 87-834, Oct. 16, 1962), which also introduced the Subpart F rules into the Internal Revenue Code.

Subpart F requires U.S. shareholders of a controlled foreign corporation (CFC) to include in their current income their pro rata share of the CFC's Subpart F income (certain types of undistributed CFC income taxable to the U.S. shareholder in the year earned). The TCJA also introduced the requirement for U.S. shareholders to include their pro rata share of a CFC's global intangible low-

taxed income (GILTI) under the new Section 951A, similar to Subpart F. The GILTI rules affect a significant number of U.S. shareholders of CFCs.

Under normal circumstances, U.S. individuals who own shares of a CFC must include Subpart F income and GILTI in their taxable income. These inclusions fall subject to individual tax rates, which can reach up to 37%. Moreover, individuals cannot receive a Section 250 deduction, which would offset GILTI, nor can they claim an indirect foreign tax credit (FTC) for foreign taxes paid by the CFC, which could reduce their U.S. tax liability. Consequently, these inclusions can result in a substantial tax liability. When the CFC later makes distributions out of previously taxed earnings and profits (PTEP) created by these inclusions, the individual generally does not pick up additional taxable income but may receive a credit for any withholding tax on the distribution.

In contrast, U.S. C corporations benefit from several provisions that substantially reduce the tax impact of Subpart F and GILTI inclusions. Corporations may take a Section 250 deduction, which effectively halves the GILTI inclusion, and pay tax at a flat 21% corporate rate. Additionally, corporations can claim an indirect FTC under Section 960, which credits the U.S. tax owed on the inclusions for the foreign taxes paid by the CFC. As a result, the effective tax rate (ETR) for a corporation on GILTI generally cannot exceed 13.125% in the current year. Moreover, when a corporation receives distributions from the CFC out of PTEP, it may also receive additional credits, further reducing the overall tax liability.

Section 962 allows an individual to effectively insert a hypothetical corporation between themselves and the CFC, enabling them to access the reduced corporate tax rates and associated benefits. By making a Section 962 election, an individual can take advantage of the 50% Section 250 deduction against GILTI, the 21% corporate tax rate, and the indirect FTC, all of which can significantly lower the current year's tax liability on Subpart F and GILTI inclusions.

If an individual made a Section 962 election with respect to a given year, when the CFC makes a distribution, to the extent the amount is equal to or lesser than the taxes paid under the Section 962 election, Section 962 does not subject

the taxpayer to further U.S. federal [income taxation. Section 962 taxes any excess distribution beyond these taxes paid either subject to the qualified dividend rate of 20% or as ordinary income at rates up to 37%, depending on whether the CFC sits in a treaty country or is a passive foreign investment company, as defined in Section 1297, Passive foreign investment company.

The potential effective tax rate (ETR) under a Section 962 election can be quite favorable. In the current year, the election can reduce the individual's tax liability on GILTI to below 10.5%, similar to a corporation's rate. When factoring in the potential qualified dividend treatment on subsequent distributions, the Section 962 election can also reduce the overall tax liability, making it a highly advantageous option for many taxpayers with CFC investments.

Making a Section 962 election involves a multi-step process that requires specific and detailed reporting on various tax forms. The complexity of this process can be daunting for taxpayers, often leading to confusion and increased compliance burdens.

According to Treas. Reg. § 1.962-2, an individual U.S. shareholder must make the Section 962 election by filing a statement with their tax return for the year in which the election is made. This statement must include all of the following information:

1. Identification of Entities: The name, address, and taxable year of each controlled foreign corporation (CFC) for which the U.S. individual owns shares, as well as details about any other entities within the ownership chain as described in Section 958(a).
2. Income Inclusions: A corporation-by-corporation breakdown of the amounts included in the shareholder's gross income under Section 951(a) [GILTI].
3. Earnings and Profits (E&P): The shareholder's pro rata share of the CFC's earnings and profits, calculated under Treas. Reg. § 1.964-1, along with the foreign taxes paid on those earnings.
4. Distributions Received: Detailed information about any distributions received from the CFC, categorized into excludable Section 962

earnings and profits, taxable Section 962 earnings and profits, and other earnings and profits, including the source of these amounts by taxable year.

5. Additional Information: Any other information that the IRS may require through forms and instructions related to the election.

Requiring a separate, unstandardized statement creates challenges not only for taxpayers but also for the IRS. These non-uniform statements prove difficult to process, making it hard for the IRS to efficiently extract and verify the necessary information. By eliminating the statement and incorporating the required data directly into standardized forms and schedules, taxpayers could follow a streamlined process and thus enhance the IRS's ability to process elections accurately and efficiently.

Making a Section 962 election introduces additional complexities in the reporting process, affecting several key tax forms:

- Form 1040: The impact on Form 1040 varies depending on when the Section 962 election is made. If the taxpayer makes no election, the individual reports GILTI as "Other Income" on Line 8z of Schedule 1 (Form 1040), which flows to Line 8 of Form 1040. If the taxpayer makes a Section 962 election, the individual reports the corresponding tax on Line 16 of Form 1040. However, the form's instructions provide no specific guidance on how to report distributions of true PTEP, 962 excludable PTEP, and non-excludable 962 PTEP, creating uncertainty for taxpayers.
- Form 8992, U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI): Taxpayers use this form to report the GILTI inclusion. However, the form does not designate any place to indicate if a Section 962 election has been made. Additionally, many tax software programs automatically flow the GILTI inclusion calculated on Form 8992 to the 1040 as income, which is incorrect when a Section 962 election is in place.

- Form 8993, Section 250 Deduction for Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI): Typically, taxpayers use a corporate form, Form 8993, to calculate the Section 250 deduction for FDII and GILTI, as well as any limitations on that deduction. E-file software does not easily generate this form alongside a Form 1040, as developers designed the software with corporations in mind. Moreover, the FDII and limitations calculations do not hold relevance for individual taxpayers making a Section 962 election, leading to additional complexity and confusion.
- Form 1118, Foreign Tax Credit - Corporations: Most often, corporations use this form to claim the Foreign Tax Credit (FTC). However, individuals making a Section 962 election must also use Form 1118 to claim foreign tax credits related to taxes paid by the CFC. The difficulty in generating a Form 1118 with a 1040 presents a challenge, and many of the schedules within the form are irrelevant to an individual 962 elector. The hypothetical 962 corporation does not have other attributes, expenses, or income—it only handles inclusions—making much of the form unnecessarily complex for individuals.
- Form 5471: This form includes a mix of schedules that reflect both the CFC's perspective and the shareholder's perspective. When it comes to Earnings and Profits (E&P) and PTEP, Schedule J provides a comprehensive view, while Schedule P focuses on the shareholder's pro rata share of PTEP. However, it makes no distinction between PTEP allocable to a shareholder's Section 962 corporation and PTEP allocable to the shareholder itself, despite the differing tax treatments. The Section 962 election's annual nature intensifies this lack of clarity, requiring taxpayers to track both types of PTEP separately. As a result, Schedule P does not provide sufficient guidance or utility for taxpayers dealing with these complexities.

The current, convoluted process for making a Section 962 election places a significant burden on taxpayers and increases the risk of error. The intricate and

overlapping requirements spread across multiple forms make the election difficult to navigate without professional assistance by practitioners who are experts in this complex area. This complexity underscores the need for simplification and clearer guidance to ensure taxpayers can make and report the election without excessive difficulty.

### **Recommendations**

1. *Eliminate the Standalone Statement Requirement:* Integrate all information currently required in the standalone statement directly into the new schedules and forms, rather than requiring a separate statement. This would not only ease the burden on taxpayers but also enable the IRS to automate data processing, reducing errors and delays.
2. *Add a 962 Checkbox on the Expanded Form 8992:* Include a checkbox on the first page of Form 8992 for taxpayers to indicate a Section 962 election. This checkbox would help both tax software and the IRS identify and process the election appropriately, redirecting the income to the correct schedules for further calculation.
3. *Create a New Schedule C on Form 8992 for Deemed Paid Foreign Taxes:* Schedule C on the expanded Form 8992 would capture deemed paid foreign taxes (currently Form 1118, Schedules C, D, and E), centralizing all Section 962-related calculations for individual taxpayers. For corporations, this schedule would feed into Form 1118 as necessary.
4. *Create a New Schedule D on Form 8992 for Simplified Section 962 Calculation:* A Schedule D would provide a step-by-step process for calculating the Section 962 tax liability, including Subpart F and GILTI inclusions, tax gross-up, foreign taxes deemed paid, and FTC limitation calculations. The final tax figure would then be transferred directly to the taxpayer's Form 1040.
5. *Create a New Schedule E on Form 8992 for PTEP Distributions:* A Schedule E on Form 8992 would provide a clear framework for tracking and reporting

PTEP distributions, detailing 962 PTEP that is excludable, taxable Section 962 PTEP, and other earnings and profits.

6. *Add columns to Schedule P of Form 5471 or Require a Separate Schedule P for Section 962 Electors:* Either add new columns to Schedule P of Form 5471 to track 962 PTEP and related distributions or require taxpayers making a Section 962 election to complete a separate Schedule P specifically designed for this purpose. This schedule would detail excludable, non-taxable 962 PTEP, as well as the amounts subject to further taxation, ensuring accurate and consistent reporting.





**INTERNAL REVENUE SERVICE ADVISORY COUNCIL**

**Small Business/Self-Employed Subgroup Report**

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## **INTRODUCTION**

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The 2024 IRSAC Small Business/Self-Employed (SB/SE) subgroup is a collaborative group of six members, including CPAs, enrolled agents, attorneys, and academics. The collective tax experience of the members includes representation of individual and entity taxpayers in tax return preparation, tax planning and advice, and tax litigation and procedure, as well as teaching and instructing current and future tax professionals.

The SB/SE Business Operating Division (BOD) serves more than 57 million small business owners and self-employed taxpayers with business interests having less than \$10 million of assets. Its mission is to help small business and self-employed taxpayers understand and meet their tax obligations, while applying the tax law with integrity and fairness to all.

The SB/SE subgroup members are honored to serve on the IRSAC. We thank all the IRS personnel we communicated with for their cooperation and assistance. We especially thank Tanya Taylor, SB/SE Subgroup Liaison, for her guidance and organization.

The BOD requested our assistance for the following three issues discussed in this report:

1. Penalties, Defenses to Penalties, and Tools to Resolve Penalties
2. Educating the Public on the Revenue Officer Position
3. Disaster Assistance to Improve the Taxpayer Experience

## **ISSUE ONE: Penalties, Defenses to Penalties, and Tools to Resolve Penalties**

**SOP Mapping: 2.2.**

### **Executive Summary**

The IRS is looking into ways to relieve taxpayers from the imposition of civil money penalties in appropriate cases.<sup>257</sup> The IRS sought guidance from the IRSAC on ways in which penalty relief can be made more broadly available to taxpayers. This is an important topic because penalties play a major role in fostering voluntary compliance with the tax laws and because of the need for relief. The IRSAC requested permission to provide comments on more robust penalty reform, especially in the areas of international information return penalties, but the IRS indicated that, at this time, they sought assistance from the IRSAC only to: (1) identify areas of the reasonable cause assistant (RCA) that prohibit acceptance of penalty relief; and (2) consider the feasibility of automating the First Time Abate (FTA) to reduce the number of cases successfully being overturned by the IRS Independent Office of Appeals (Appeals).<sup>258</sup> We offer recommendations on the questions posed by the IRS and, due to the significance of challenges some taxpayers face in resolving penalties, we also offer limited suggestions for broader penalty reform.<sup>259</sup>

### **Background**

#### *Statistics on Penalties*

To better understand the degree of penalty assessment, members of the IRSAC asked for: (1) information about the type, number, and amount of all penalties assessed and abated by the IRS against taxpayers and third parties; and

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<sup>257</sup> As used herein, the term “penalties” refers to “penalties,” additions to tax,” and/or “additional amounts.”

<sup>258</sup> We also learned that the IRS Taxpayer Experience Office (TXO) has been working on ways to reduce penalties for failure to file Forms 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, and 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner*, as part of its work on SOP Initiative 1.7 to provide earlier legal certainty to taxpayers.

<sup>259</sup> The IRSAC believes the IRS should engage in broader penalty reform. The IRSAC suggests that the IRS include the topic of penalty reform among the topics to be assigned to the IRSAC next year.

(2) clarification as to whether statistics contained in the IRS’s annual Data Book (the “Data Book”),<sup>260</sup> which includes detailed information about some but not all penalties, included information on international information return penalties (*i.e.*, information returns required under the Internal Revenue Code to report, for example, foreign financial assets and interests in foreign entities). We learned that these statistics are kept, are not included in the Data Book, and could not be made available for this narrower request by the IRSAC.

#### *Overall Responsibility for Determining Penalties Policy*

During our interactions with the Subject Matter Experts (SMEs) concerning penalties, we learned that responsibility for the imposition of penalties is spread across many employees within the IRS’s business operating divisions such that no one person or team within the IRS is responsible for ensuring that the IRS’s policies and procedures respecting penalties are consistent and coordinated. From meeting with SMEs and our review of the Internal Revenue Manual (IRM) we learned that overall responsibility for civil penalty programs is assigned to the Office of Servicewide Penalties (OSP), in the SB/SE Division.<sup>261</sup> But, in general, each IRS organization is responsible for establishing an internal process for managing their specific procedures based upon Servicewide policies and may develop additional guidance or reference materials for their specific function’s administrative needs.<sup>262</sup> And, despite the OSP’s overall responsibility for civil penalty programs, the Director of the Withholding Exchange & Individual International Compliance (WEIIC) manages and administers international individual compliance penalties (*i.e.*, international information return penalties under the Code). During a meeting with the OSP and WEIIC, we learned that WEIIC has responsibility for imposing international information return penalties during examinations but not during system assessments at Campus centers. The assessment of systemic, Campus-based international information return penalties

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<sup>260</sup> References to the “Data Book” are to the IRS’s annual compilation of information on, among other things, collecting federal tax revenue, enforcing tax law, assisting taxpayers, and managing the internal revenue system.

<sup>261</sup> IRM, pt. 20.1.1.1.3(2) (Mar. 29, 2023).

<sup>262</sup> IRM, pt. 20.1.1.1.3(2) (Mar. 29, 2023). Such reference material must receive approval from the OSP prior to distribution. *Id.*

(i.e., penalties assessed upon the late-filing of an international information tax return), are under the authority of TS (as well as customer service representatives, who are specifically trained on reasonable cause). Finally, the Director, SB/SE Specialty Exam Policy, is the executive responsible for the FBAR program (i.e., penalties determined under Title 31 of the Code). Lack of coordination can lead to inconsistencies in the abatement of penalties for reasonable cause or application of the FTA.

### *Reasonable Cause and the RCA*

The RCA is a decision-support interactive software program that assists IRS employees to make a reasonable cause determination relative to a taxpayer's penalty relief request for failure to file, failure to pay, and failure to deposit penalties.<sup>263</sup> The IRS is working to identify and make needed changes within the RCA to allow for more realistic and fair evaluations when determining whether a penalty should be excused on the grounds of reasonable cause. To that end, the IRS asked the IRSAC to provide feedback concerning: (1) examples commonly asserted as a reasonable cause to excuse a penalty for failure to timely file, pay, or deposit;<sup>264</sup> (2) additional reasons constituting a reasonable cause to excuse a penalty for failure to timely file, pay or deposit that the IRSAC would like for the IRS to consider for inclusion in the RCA; (3) a reasonable timeframe that taxpayers would need to come into tax filing or tax payment compliance after the removal of the circumstance constituting a reasonable cause to excuse a failure to timely file, pay, or deposit; and (4) whether it is reasonable to request documentation to support the taxpayer's explanation, and if so, what type of supporting documentation would be recommended. We address each question in turn, but first provide some important context for our responses.

#### 1. Preliminaries

The IRSAC was unable to obtain complete information about the RCA because of its proprietary nature. As a result, the IRSAC's ability to

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<sup>263</sup> IRM 20.1.1.3.6 (Oct. 19, 2020).

<sup>264</sup> References herein to the "failure to timely file, pay, or deposit" refer, respectively, to the failure to timely file a tax return, the failure to timely pay a tax, or the failure to timely deposit a tax.

comment on the usefulness of the current version of the RCA may be limited. Against that background, we begin by noting that the IRM contains a detailed list of circumstances potentially constituting a reasonable cause to excuse a penalty for the failure to timely file, pay, or deposit, including (depending upon the facts):

- Death, serious illness, or unavoidable absence;
- Fire, casualty, natural disaster, or other disturbance;
- An inability to obtain records;
- A mistake of fact or a mistake of law;
- Erroneous advice or reliance;
- Ignorance of the law;
- Forgetfulness; and
- Inaccessible notices.

Anecdotally, it seems the RCA does not consider all of these circumstances in determining whether a penalty for failure to timely file, pay, or deposit should be excused on the grounds of reasonable cause. This observation is supported by: (a) statistics from the 2022 and 2023 Data Books, establishing that approximately 69.1% and 19.8% of all civil penalties were abated during fiscal year 2022 and 2023, respectively;<sup>265</sup> and (b) evidence from the NTA demonstrating that 84% of international information return penalties assessed under Sections 6038 and 6038A (*i.e.*, those attributable to failure to timely file Forms 5471 and 5472) are

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<sup>265</sup> See IRS, *Data Book, 2022*, Pub. 55-B (Mar. 2023), p. 72 (Table 26, Civil Penalties Assessed and Abated); IRS, *Data Book, 2023*, Pub. 55-B (Apr. 2024), p. 72 (Table 28, Civil Penalties Assessed and Abated). The total civil penalties abated for 2022 was determined, as a percentage, by dividing the total dollar amount of civil penalties abated (\$50,858,228) by the total dollar amount of civil penalties assessed (\$73,611,454). The total civil penalties abated for 2023 was determined, as a percentage, by dividing the total dollar amount of civil penalties abated (\$13,012,834) by the total dollar amount of civil penalties assessed (\$65,574,052). As discussed more fully herein, because the 2022 and 2023 Data Books do not contain information about all penalties assessed and because the IRS did not provide the IRSAC access to more holistic information about the type, number, and amount of penalties assessed, the actual percentage may be different.

systemically assessed are abated.<sup>266</sup>

2. Common and Additional Reasons (with Examples)

The IRS asked the IRSAC to identify reasons commonly asserted as a reasonable cause as well as additional reasons to excuse a penalty for failure to timely file, pay, or deposit.

a. Common Reasons

The reasons cited in the IRM are most (but not all) of the justifications taxpayers and practitioners assert that a reasonable cause exists to excuse a penalty for failure to timely file, pay, or deposit.

b. Additional Reasons

The additional types of circumstances that the IRS might recognize as constituting a reasonable cause include:

- Situations in which reliance on a professional to perform the ministerial act of electronically filing a tax return that the taxpayer signed and authorized to be electronically filed, but which the taxpayer cannot electronically file, constitutes a reasonable cause to excuse the failure to timely file, pay, or deposit.<sup>267</sup>

3. Reasonable Timeframe

The IRS requested guidance respecting a reasonable timeframe that a taxpayer would need to come into tax filing or tax payment compliance after the removal of the circumstance allegedly constituting a reasonable

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<sup>266</sup> See NTA, *2023 Annual Report to Congress*, p. 111 (reporting that the IRS abated \$327.8 million of the total \$390.8 million of penalties assessed under Sections 6038 and 6038A). Again, the Data Book does not contain sufficient information to allow us to determine the abatement percentage of civil penalties assessed with respect to the failure to file other international information returns or forms (e.g., those relating to failure to file Forms 3520, 3520-A, 8938).

<sup>267</sup> A few cases in recent years have held that a taxpayer did not have reasonable cause to rely upon a return preparer to e-file their return because this non-delegable duty of filing could have been handled with the taxpayer filing their return or extension by paper. For example, see application of the *Boyle* decision (469 U.S. 241 (1985)) in *Lee*, 84 F.4<sup>th</sup> 1271 (11<sup>th</sup> Cir., 2023), *Oosterwijk*, 129 AFTR2d 2022-512 (DC MD, 2022), and *Intress*, 404 F.Supp.3d 1174 (DC TN, 2019). Appropriate reasonable cause penalty relief for preparer e-filing errors would not only provide relief but hopefully end these type of controversies, where the judicial decision is for taxpayers to paper file to avoid penalties for e-filing penalties, which decisions may stifle the IRS's efforts to have taxpayers electronically file tax returns.



cause to excuse a failure to timely file, pay, or deposit.

Adopting a bright-line rule under which reasonable cause cannot exist after a specified number of days is generally not preferred because it overlooks that determining the existence of reasonable cause is a factually intensive exercise.

4. Documentation to Support the Existence of Reasonable Cause

The IRS asked if it is reasonable to request documentation to support the taxpayer's explanation of reasonable cause and, if so, what type of supporting documentation would be recommended. All that existing Treasury Regulations require for a taxpayer to avoid the late filing penalty on the ground of reasonable cause is for the taxpayer to make an affirmative showing of all facts alleged as reasonable cause for late-filing the return in a written statement signed under penalties of perjury.<sup>268</sup>

*FTA*

The NTA's 2023 Annual Report to Congress recommends that the IRS "program information technology systems to systemically apply [FTA] to all eligible taxpayers beginning in Filing Season 2024 while also providing taxpayers the ability to substitute a reasonable cause defense when substantiated by the taxpayer."<sup>269</sup> The IRS responded that it is "actively working to program our information technology systems to systematically apply FTA to all eligible taxpayers by January 1, 2026, in time for filing season 2026.... The IRS is also developing the process by which taxpayers will be able to change FTA to reasonable cause when reasonable cause criteria are met."<sup>270</sup>

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<sup>268</sup> Treas. Reg. § 301.6651-1(c)(1). The IRM. does permit oral requests for penalty relief in certain circumstances. See generally IRM 20.1.1.3.1 (Mar. 29, 2023).

<sup>269</sup> See NTA, Posting of *The Good, the Bad, and the Concerning (Part 1 of 3)*, the IRS Responds to TAS's Most Serious Problem Recommendations to the NTA Blog (July 16, 2024), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/the-good-the-bad-and-the-concerning-part-1-of-3/2024/07/>.

<sup>270</sup> *Id.* (quoting the IRS's response to the NTA's recommendation as stated in the NTA blog post).

*The IRS's Policies and Procedures Concerning Penalties Are Sometimes  
Inconsistent, and a Study Should Be Performed*

The NTA and multiple professional organizations have expressed concern that the IRS's policies and procedures concerning penalties are in many material respects inconsistent and inefficient, leading to unfair results and undermining voluntary compliance.<sup>271</sup> In 1999, the IRS conducted a study of the penalty and interest provisions of the Code in response to a mandate under the IRS Restructuring and Reform Act of 1998 (RRA 1998).<sup>272</sup> Although Congress enacted sweeping changes to the protections afforded to taxpayers in the Taxpayer First Act of 2019,<sup>273</sup> Congress did not similarly require the IRS to conduct a study concerning its administration of penalties, as Congress did in RRA 1998. The penalty framework and enforcement landscape has changed considerably since the IRS's last study in 1999, and it is appropriate for the IRS to consider whether meaningful reform concerning the administration of penalties is needed.

**Recommendations**

1. Penalty Administration Generally

- a. Improve transparency concerning the assessment and abatement of penalties by publishing in the Data Book more specific details concerning the assessment and abatement of commonly asserted penalties (e.g., accuracy-related penalties on account of a substantial understatement of income tax or negligence or disregard of rules or regulations),<sup>274</sup> penalties that are an enforcement priority (e.g., international information return and promoter penalties), and

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<sup>271</sup> Accord NTA, *2023 Annual Report to Congress*, pp. 101 to 115 (identifying the IRS's enforcement of international information return penalties as "draconian and inefficient"); see also Andrew Velarde, Commentators Insist on Foreign Trust Reporting Penalty Reform, *Tax Notes* (July 10, 2024).

<sup>272</sup> P. L. 105-206, § 3801 (July 22, 1998); see Dept. of the Treasury, *Report to the Congress on Penalty and Interest Provisions of the Internal Revenue Code* (Oct. 1999); <https://home.treasury.gov/system/files/131/Report-Penalty-Interest-Provisions-1999.pdf>.

<sup>273</sup> See generally, P. L. 116-25 (July 1, 2019).

<sup>274</sup> The Data Book reports information about accuracy-related penalties generally but does not provide detailed information about the specific type of misdeed leading to the accuracy-related penalties.

penalties that are (or should be) of interest to taxpayers and practitioners (e.g., reportable transaction penalties under Section 6662A, paid return preparer penalties under Section 6694 or other assessable penalties respecting the preparation of tax returns for others under Section 6695).

- b. Create a Director of Civil Penalties position, to serve directly under the Chief Tax Compliance Officer, and require that the Director of Civil Penalties have private practice experience so that industry perspective can be brought to the IRS concerning the administration of penalties. Have the Director of Civil Penalties commission an advisory task force that includes IRS employees, private practitioners, academics, and low-income taxpayer clinic practitioners to conduct a study, as was done post-RRA 1998, with respect to the penalty provisions of the Code and focusing on ways the IRS's policies and procedures could be made more consistent.

## 2. Reasonable Cause and the RCA

- a. Work with the U.S. Department of the Treasury to issue proposed, interpretive regulations under Section 6651 and solicit comments from the public as to (among other things) the factors that should be evaluated in determining whether a taxpayer has reasonable cause to excuse a penalty on the ground of failure to timely file, pay, or deposit. At least until those regulations are issued, the IRS should apply the rule of lenity to require IRS employee to liberally apply the reasonable cause exception.<sup>275</sup>
- b. Consider updating policy statements concerning penalties to reflect developments in the law that have occurred since the last time they

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<sup>275</sup> The rule of lenity is a principle of criminal statutory interpretation that requires a law to be applied in the manner that is most favorable to the defendant that when a law is unclear or ambiguous. The rule of lenity applies to civil tax penalties. See *United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 517-518 (1992).

were updated which was more than 20 years ago.<sup>276</sup>

- c. Confirm with the business operating division responsible for the RCA that the RCA incorporates all of the reasons identified in the IRM as constituting a reasonable cause to excuse the failure to timely file, pay, or deposit.
- d. Recognize a new reasonable cause exception in which reliance on a professional to perform the ministerial act of electronically filing a tax return that the taxpayer signed and authorized to be electronically filed, but which the taxpayer cannot electronically file, constitutes a reasonable cause to excuse the failure to timely file, pay, or deposit.
- e. In lieu of adopting a bright-line rule under which reasonable cause cannot exist after a specified number of days, instruct taxpayers to explain in a written statement submitted under penalty of perjury, the facts and circumstances surrounding the late-filing and the corrective steps taken to remedy the noncompliance. In addressing the corrective action, the taxpayer should also explain the reasonableness of the period between the existence of the condition that caused the late-filing and the ultimate filing. For example, a taxpayer might explain the lingering effects of a serious physical injury or mental illness, the additional time needed to engage a competent professional, related complexities associated with the filing of the required return, and the need to liquidate assets to remit payment. Then, after the taxpayer incurs the time and expense of preparing that written statement, signed under penalties of perjury, the IRS should accept the taxpayer's position or assign the issue for review by an auditor who can perform the necessary fact-finding to determine whether reasonable cause exists. Alternatively, to the

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<sup>276</sup> The IRM contains two policy statements concerning penalties, one last updated in 2004 and the second last updated in 1981. See IRM 1.2.1.12.1 (June 29, 2004), Policy Statement 20-1 (Formerly P-1-8); IRM 1.2.1.12.2 (Nov. 6, 1981), Policy Statement 20-2 (formerly P-2-4). The IRS should update the policy statements under the auspices of a new Director of Civil Penalties, after the IRS completes a study of the penalty and interest provisions of the Code.

extent the IRS decides that a bright-line rule is appropriate, the IRS should provide that (1) this factor (*i.e.*, the time it took for the taxpayer to take corrective action) will weigh in favor of a finding of reasonable cause if a taxpayer takes corrective action within 90 days of being notified of the deficient tax filing, payment, or deposit, and (2) this factor will be neutral as to the existence of reasonable cause if a taxpayer does not take corrective action within 90 days of being notified of the deficient tax filing, payment, or deposit.

- f. Modify documentation instructions: In terms of requiring taxpayers to submit documentation to support the existence of reasonable cause, we believe it is not appropriate for the IRS, through nonbinding, sub-regulatory guidance, to require taxpayers to submit documentation corroborating the existence of reasonable cause because doing so runs the risk of IRS employees elevating substantiation over facts and does not go through the notice and comment process generally required for agency action. We do believe, however, that it is appropriate for the IRM to advise taxpayers that it is typically advisable to include supporting documentation with the required reasonable cause statement. For example, a taxpayer who contends that a serious physical injury or mental illness caused the late filing might be advised to attach to the reasonable cause statement hospital records and/or a letter from a physician, psychiatrist, or psychologist. Similarly, a taxpayer who claims that an incapacitation caused the late filing might be advised to attach any available court records to the reasonable cause statement. Finally, a taxpayer who contends that a casualty or natural disaster caused the late filing might be advised to attach documentation as to the natural disaster or other events that prevented compliance. Such documentation could include copies of police or fire reports, media coverage, insurance claims (and responses), photos of damages, estimates for work to be performed, and/or receipts for rehabilitative work

- performed (or supplies purchased).
- g. Eliminate the heightened standard for reporting of international information return penalties as set forth in the IRM, providing that it is not reasonable or prudent for a taxpayer to have no knowledge of, or to solely rely on others for, the tax treatment of international transactions,<sup>277</sup> and instead adopt the position for all eligible penalties and additions to tax that a taxpayer who relies on the advice of a tax professional may constitute reasonable cause provided that: (1) the advisor was a competent professional who had sufficient expertise to justify reliance; (2) the taxpayer gave the advisor the necessary and accurate information; and (3) the taxpayer actually relied in good faith on the advisor's judgment.<sup>278</sup>
  - h. Modify penalty instructions to employees: While the RCA may lead an IRS employee to a "likely outcome" when dealing with the imposition of a penalty for failure to timely file, pay, or deposit, employees should be encouraged to (1) challenge that indicator when the RCA appears to produce a result that seems unfair to the taxpayer against whom the penalty will be assessed or the American taxpayers more generally, and/or (2) refer that penalty to an examiner to develop the facts necessary to determine if it is, in-fact, an appropriately assessed penalty. This recommendation is in accordance with the IRS's policy statements concerning penalties,

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<sup>277</sup> IRM 20.1.9.1.5(4) (Jan. 29, 2021).

<sup>278</sup> Traditionally, in the context of accuracy-related penalties, reliance on a professional advisor can constitute reasonable cause where: (1) the advisor was a competent professional who had sufficient expertise to justify reliance; (2) the taxpayer gave the advisor the necessary and accurate information; and (3) the taxpayer actually relied in good faith on the advisor's judgment. See Treas. Reg. § 301.6664-4(b)(1); see also *Neonatology Assocs. P.A. v. Commissioner*, 115 T.C. 43, 99 (2000), *aff'd*, 299 F.3d 221 (3<sup>rd</sup> Cir. 2002). Various federal appellate and district courts, as well as the United States Tax Court, have extended this logic to penalties for failure to timely file. See, e.g., *Commissioner v. Am. Ass'n of Eng'rs Emp't, Inc.*, 204 F.2d 19, 21 (7<sup>th</sup> Cir. 1953); *Burton Swartz Land Corp. v. Commissioner*, 198 F2d 558, 560 (5<sup>th</sup> Cir. 1952); *Haywood Lumber & Min. Co. v. Commissioner*, 178 F2d 769, n1 (2<sup>nd</sup> Cir. 1950); *Girard Inv. Co. v. Commissioner*, 122 F2d 843, 848 (3<sup>rd</sup> Cir. 1941); see also *James v. United States*, 110 AFTR 2d 2012-5587 (M.D. FL, 2013); *Nance v. United States*, 111 AFTR 2d 2013-1616 (WD TN, 2013). See also *Kelly v. Commissioner*, T.C. Memo. 2021-76.

which requires IRS employee to “consider the elements of each potentially applicable penalty and then fully develop the facts to support the application of the penalty, or to establish that the penalty does not apply, when the initial consideration indicates that penalties should apply.”<sup>279</sup>

### 3. FTA

Do not resort to administrative waivers until determining that the statute authorizes a penalty: The IRSAC is concerned by the NTA’s recommendation, and the IRS’s acquiescence, that the FTA be automatically applied to penalties without first evaluating whether the penalty was authorized to be assessed under the statute (*i.e.*, whether there was actual misconduct the statute penalizes), whether the statute excuses that misconduct (*e.g.* whether there was reasonable cause for the misconduct), and whether the IRS complied with other procedural provisions of the Code potentially barring the assessment of the tax (*e.g.*, Section 6751). We encourage the IRS (and the NTA) to not resort to the question of administrative waivers until a determination is made that the Code authorizes the assessment of the penalty. Assuming the IRS will move ahead with automating the FTA, we recommend as follows:

- Grants of FTA should be communicated in plain English to explain the reasons the taxpayer might want to have an FTA apply (or not apply) to the penalty. The notice should invite taxpayers to submit documents establishing reasonable cause and explaining the benefits of that submission (preservation of the FTA). The IRS should also devote adequate resources to timely address responses that will likely be sent in response to the notice applying the FTA.
- Within applicable statutes of limitation, either (1) there should be no time limit on when application of the FTA can be revoked by

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<sup>279</sup> See IRM 1.2.1.12.1(4) (June 29, 2004), Policy Statement 20-1 (Formerly P-1-8).

the taxpayer, or (2) the time limit on when application of the FTA can be revoked by the taxpayer should be extended to some longer period (e.g., three years or six years). On this point, a taxpayer may not have counsel when the FTA is automatically applied (or the amount of the penalty might be too small to justify having counsel draft a reasonable cause statement or look into the issue). But, when a larger penalty is imposed at a later date, counsel might then get involved, look into the issue, and decide to push back on the IRS for removal of the smaller, earlier penalty because doing so will free-up the FTA for the later, larger penalty.



## ISSUE TWO: Educating the Public on the Revenue Officer Position

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**SOP Mapping:** 2.3, 2.7.

### **Executive Summary**

The IRS has taken steps to educate the public about the roles and responsibilities of its employees, including revenue officers. For example, FS-2023-17<sup>280</sup> provides: “IRS revenue officers are unarmed civil agency employees whose duties include visiting households and businesses to help taxpayers resolve their account balances. Their job is to collect taxes that are delinquent and have not been paid to the IRS and to secure tax returns that are overdue from taxpayers.”

It is important for the IRS to educate taxpayers about the critical role its employees play in our tax system for at least two reasons. First, to correct the misrepresentation that some taxpayers may believe that funding provided to the IRS under the Inflation Reduction Act of 2022 (IRA 2022)<sup>281</sup> will be used to hire 87,000 new IRS agents who will “be weaponized against American taxpayers.”<sup>282</sup> This misinformation, which the IRSAC rejects as inaccurate and irresponsible, must be corrected by the IRS, especially as it concerns revenue officers, who interact with taxpayers in-person more than many other IRS employees. Second, in July 2023, the IRS adopted a major policy change that ended most unannounced visits to taxpayers by revenue officers to reduce public confusion and enhance overall safety measures for taxpayers and IRS employees.<sup>283</sup> The cancellation of unannounced, in-person visits, in turn, arguably eliminated an opportunity for revenue officers to educate taxpayers about their role and

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<sup>280</sup> FS-2023-17 (July 2023), How to know it is an IRS revenue officer; <https://www.irs.gov/newsroom/how-to-know-it-is-an-irs-revenue-officer>.

<sup>281</sup> P.L. 117-69 (Aug. 16, 2022).

<sup>282</sup> Accord David F. Eisner, *Stop the dangerous IRS rhetoric: The truth about IRS funding* (Aug. 24, 2022), <https://thehill.com/opinion/finance/3613950-stop-the-dangerous-rhetoric-the-truth-about-irs-funding/>.

<sup>283</sup> IR-2023-133 (July 24, 2023), IRS ends unannounced revenue officer visits to taxpayers; major change to end confusion, enhance safety as part of larger agency transformation efforts; <https://www.irs.gov/newsroom/irs-ends-unannounced-revenue-officer-visits-to-taxpayers-major-change-to-end-confusion-enhance-safety-as-part-of-larger-agency-transformation-efforts>.

responsibilities given the value of face-to-face interactions.<sup>284</sup>

The IRS is also taking steps to make the tax collection process more predictable and efficient. But, as noted, taxpayers have limited opportunities to interact with a revenue officer to understand the revenue officer's roles and responsibilities as well as the information the taxpayer is expected to produce to the revenue officer. For these concerns about taxpayer understanding of revenue officers, the IRS asked the IRSAC to help the IRS explain to taxpayers and tax practitioners how to prepare for a meeting with a revenue officer.

## **Background**

### *Existing Educational Programs*

The IRS has undertaken several initiatives to educate the public about the roles and responsibilities of revenue officers. These efforts aim to enhance transparency, improve compliance, and foster a better understanding of the IRS's enforcement actions. According to the IRS, the main avenues to communicate this information to the public consist of two separate "landing pages" on the IRS's website,<sup>285</sup> social media sites, and local media for public service announcements. The IRS also holds meetings and workshops with professional organizations representing tax preparers through the National Public Liaison (NPL), Taxpayer Experience Office (TXO), and the Taxpayer Advocate Service (TAS). Existing educational efforts at the IRS include the following.

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<sup>284</sup> There are other benefits to the IRS's educational program as it relates to revenue officers. For example, behavioral science research supports that ongoing long-term and short-term educational programs improve overall voluntary tax compliance. See, e.g., Marjorie E. Kornhauser, *Normative and Cognitive Aspects of Tax Compliance: Literature Review and Recommendations for the IRS Regarding Individual Taxpayers* (2007), pp. 25 to 31; [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/11/aspects\\_tax\\_compliance\\_dec2007.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/11/aspects_tax_compliance_dec2007.pdf). Educating taxpayers who are interacting with a revenue officer, perhaps for the first time, is important because the taxpayer will, on the basis of that interaction, develop a perception of the tax authority's procedural fairness, which will in turn inform taxpayer's propensity to comply with the internal revenue laws in the future.

<sup>285</sup> IRS, Collection Process: Filing or Paying Late, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-process-for-taxpayers-filing-and-or-paying-late> (last updated Mar. 25, 2024); IRS, FS-2023-17 (July 2023); How to know it is an IRS revenue officer; <https://www.irs.gov/newsroom/how-to-know-it-is-an-irs-revenue-officer>.

1. Public Outreach:

- Webinars and Seminars: The IRS hosts webinars and seminars directed to taxpayers and tax professionals. Some of these sessions provide detailed insights into the tax collection process, taxpayers' rights, and the role of revenue officers.
- IRS Website: The IRS's website features a dedicated webpage for the collection process, including detailed frequently asked questions, fact sheets, and guides on how to deal with tax debts.<sup>286</sup> For example, IRS Fact Sheet 2023-17 answers the question "what is a revenue officer," explains how they work and how they differ from other IRS officials.
- IRS Publications: The IRS has various publications that are intended to educate taxpayers about the tax collection process. For example, Publication 1, *Your Rights as a Taxpayer*, Publication 594, *The IRS Collection Process*, and Publication 1660, *Collection Appeal Rights*, all describe the collection process in varying degrees of detail and sophistication. Publications 594 and 1660, but not Publication 1, use the term "revenue officer," but they do not explain who a revenue officer is or what are the revenue officer's responsibilities.<sup>287</sup>

2. Media Engagement:

- Press Releases and News Articles
- Social Media Campaigns

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<sup>286</sup> See IRS, Collection Process: Filing or Paying Late, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-process-for-taxpayers-filing-and-or-paying-late> (last updated Mar. 25, 2024).

<sup>287</sup> Although the eight-page, small font, overly technical Publication 594 refers taxpayers to a webpage entitled "How to know if it's really the IRS," the IRSAC does not believe it is realistic to expect that a taxpayer will go to that webpage (especially without a QR Code) and take the time to understand a revenue officer's roles and responsibilities.

3. Partnerships with Community Organizations:

- Collaborations with Non-profits and Advocacy Groups: The IRS partners with community organizations and programs, such as the VITA Program, to offer education and assistance programs. These collaborations help reach underserved communities and provide localized support for resolving tax issues.
- Taxpayer Assistance Centers (TACs): These centers offer face-to-face assistance for taxpayers dealing with collection issues.

4. Enhanced Training for Revenue Officers:

- Professional Development: The IRS invests in ongoing training for revenue officers to ensure they are well-equipped to handle complex tax issues and interact effectively with the public.
  - Observation on Training and Practice: Although this training is required, in meetings with IRS personnel, we questioned whether the training is taken, understood, and/or its lessons followed by all revenue officers. We note some IRSAC members' experience that some revenue officers take enforced collection action (e.g., file a notice of federal tax lien or propose to levy property) before contacting the taxpayer to educate them and attempt to negotiate and secure a collection alternative. We specifically noted that, before contacting the taxpayer to educate them about enforced collection or negotiate and secure a collection alternative, some revenue officers merely issue a Letter 1058, *Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing*, Letter 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320*, or any other notice conferring

collection due process hearing rights on taxpayers (such notices, collectively, “Final Collection Notices”). This process is inefficient for everyone except the revenue officer, antagonistic, and misses an opportunity to educate taxpayers about the revenue officer position, the collection process more generally, and the options available to taxpayers to voluntarily address outstanding balances without the need for the IRS to resort to enforced collection.

- **Emphasis on Communication Skills:** Training programs emphasize the importance of clear, empathetic communication to help taxpayers understand their obligations and the steps they need to take to resolve their tax debts as professionally and expeditiously as possible.

#### *Collection Initiatives in Light of the Strategic Operating Plan*

The IRS Strategic Operating Plan (SOP)<sup>288</sup> outlines the IRS’s priorities and goals for improving tax administration and enhancing taxpayer services. Public education efforts about the tax collection process and revenue officers align closely with several key elements of this plan. Specifically, Initiative 2.7 of the SOP includes the following projects:

- Refine collection communications to make them more efficient and effective.
  - Redesign current notices and other communications to make them clearer and to help the taxpayer understand directions and a seamless way to resolve the issue.
- Develop and pilot new collection treatments based on data and analytics.

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<sup>288</sup> IR-2023-72 (Apr. 6, 2023); <https://www.irs.gov/newsroom/irs-unveils-strategic-operating-plan-ambitious-effort-details-a-decade-of-change>. Also see SOP; <https://www.irs.gov/about-irs/irs-inflation-reduction-act-strategic-operating-plan>.

- Develop new collection treatments by leveraging new data and IT capabilities, such as digital communications channels.

In line with the SOP initiative to improve notices, around April 2024, the IRS met with IRSAC members and learned about efforts in developing and improving the letters and messages relative to the issue of educating the public about the revenue officer position. The IRS solicited feedback from the IRSAC on proposed changes to draft Letter 725-B, a new appointment letter. The IRSAC provided detailed comments addressing what we perceived to be incomplete or confusing explanations and instructions. These comments can be generally summarized as follows:

- Simplify the letter and add nontechnical explanations respecting who the sender of the letter is (a revenue officer) and that person’s role and responsibilities (to collect assessed but unpaid tax liabilities, to secure required but unfiled tax returns, or both);
- Add language clarifying that the taxpayer has the right to challenge the position of the IRS (e.g., challenging the position in the letter that there are unfiled tax returns or unpaid taxes);
- Educate the taxpayer about the IRS’s procedures, as relevant to the issues presented in the letter (e.g., clarifying the IRS’s apparent position that tax returns delivered to a revenue officer are not deemed filed when received by the revenue officer and noting that the tax returns should be submitted to the IRS for filing in conformity with the tax form’s instructions);<sup>289</sup>
- Advise the taxpayer of the consequences for failing to take certain action and what those consequences mean (e.g., advising the taxpayer that the failure to file a tax return will result in the IRS preparing a substitute

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<sup>289</sup> Although the IRS’s stated policy is to process delinquent returns submitted directly to a revenue officer, see IRM 5.1.11.6 (Nov. 29, 2023), *et seq.*, the IRS does not always follow this policy, see, e.g., *Seaview Trading, LLC v. Commissioner*, No. 20-72416, 62 F.4<sup>th</sup> 1131 (9th Cir., Mar. 10, 2023) (en banc), *aff’g on other grounds*, 118 T.C.M. (CCH) 265, T.C. Memo. 2019-122 (return not “filed” when faxed to revenue agent or mailed to IRS attorney because not proper place for filing); *cert. denied* (Jan. 8, 2024).

for return, which may not take into account all tax benefits to which the taxpayer is entitled);

- Offer alternatives to traditional third-party information returns for securing reliable information about income and expenses (*e.g.*, making the taxpayer aware of the ability to obtain from the IRS a so-called “wage and income transcript” and explaining what is a wage and income transcript);
- Alert the taxpayer in clear and nontechnical terms the consequences of failing to address the tax liability (*e.g.*, the filing of a notice of federal tax lien and/or the issuance of a proposed levy); and
- Note that interest is “generally” computed from the due date of the return until the liability is paid in-full, which qualifier was added to note that interest may be suspended under the Internal Revenue Code of 1986, as amended.

We applaud the IRS on its work to obtain comments on notices and draft notices from practitioners and taxpayers.

The IRS's efforts to educate the public about the tax collection process and the role of revenue officers are multifaceted, involving direct communication, community partnerships, and enhanced digital resources. Overall, these initiatives align with the IRS Strategic Operating Plan's goals of improving customer service, increasing transparency, modernizing processes, strengthening enforcement, and expanding community engagement. By fostering a better understanding of the tax collection process and the supportive role of revenue officers, the IRS aims to enhance compliance and build public trust. Nevertheless, we offer below recommendations for improving the process and further building trust between the IRS and the public.

### **Recommendations**

1. Consider changing the official job title of “revenue officer” to “collections officer,” “tax collections officer,” “revenue collections officer,” or some other title that more precisely conveys to taxpayers the duties the employee

- performs on a regular basis.
2. Update Publications 594 and 1660, but not Publication 1,<sup>290</sup> to explain in simple and non-technical terms who a revenue officer is and what are a revenue officer's responsibilities are. Also, simplify Publication 594, The IRS Collection Process.
  3. Use existing tax collections-related letters to educate the taxpayer-addressee about who a revenue officer is, what a revenue officer does, and how a taxpayer should prepare for an appointment with a revenue officer. The letters, which should be written in simple and non-technical terms, should incorporate the items identified in the immediately next paragraph.
  4. Create a webpage and publication entitled "What is a Revenue Officer and What Should a Taxpayer Do When Contacted by a Revenue Officer?" (the "Revenue Officer Landing Page"). On the Revenue Officer Landing Page, the IRS should answer in simple terms the following questions: (a) who a revenue officer is (*i.e.*, an IRS employee in the civil division of the IRS's collections department); (b) what a revenue officer does (*i.e.*, collects assessed (recorded) but unpaid tax liabilities and secures required but unfiled tax returns); and (c) how a taxpayer should prepare for an appointment with a revenue officer. As to item (c), the IRS might suggest that a taxpayer can prepare for an appointment with a revenue officer by taking each of the steps laid out in a new publication and website on this topic. An example of such a publication and website is included at the end of these recommendations.
  5. Invest in search engine optimization so that the Revenue Officer Landing Page, as opposed to hits from tax resolution firms, receives a top ranking in

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<sup>290</sup> We are mindful that the primary purpose of Publication 1 is to explain a taxpayer's rights and convey general information about the examination, appeal, collection and refund processes. For that reason, we recognize that including in Publication 1 too much detailed information (including information about revenue officers) may frustrate the intended purpose of Publication 1. We also recognize that Publication 1 contains cross-references to other publications, including Publications 594 and 1660, which more thoroughly discuss the collection process. Against that background, we do not think it appropriate for Publication 1 to contain a detailed discussion of the revenue officer's role in the tax administration process, though we do believe Publications 594 and 1660 are appropriate vehicles for that information.



search engine results.<sup>291</sup>

6. Include a quick response (“QR”) code and link to the Revenue Officer Landing Page, on any collection notice issued by a field office (*i.e.*, all collection notices other than those issued by the automated collection system),
7. Revenue officers should always introduce themselves by sending Letter 725-B promptly upon assignment to a taxpayer. Before issuing a Final Collection Notice (*e.g.*, CP90, Letter 1058, etc.), the revenue officer should document their attempts to contact the taxpayer to solicit payment or unfiled tax returns, answer any questions, and educate the taxpayer about the collection process, taxpayer rights, and the revenue officer’s role in the tax administration process.

## **Recommended Publication and Website per Recommendation 4 Above**

### **How to Prepare for Your Appointment with a Revenue Officer**

- Know Your Rights: Understand your rights as a taxpayer by reviewing IRS Publication 1.
- Seek Professional Advice: Consider consulting with a tax attorney, certified public accountant, enrolled agent, or other properly credentialed individual to ensure that you understand the tax collection process and your options. Be wary of promises of setting tax debts for pennies on the dollar and other outcomes that sound too good to be true.
- Review Your Tax Returns: Review your tax returns to confirm that you did not misstate any items of income or omit any deductions or credits. If you identify any errors on your tax return, consider amending your tax return. If the IRS contends that you are liable for penalties, consider whether the

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<sup>291</sup> It appears the IRS is using search engine optimization for at least some of its webpages, but we suggest that the IRS should also invest in this search engine optimization for the Revenue Officer Landing Page.

- penalties should be removed due to the existence of reasonable cause, the IRS's First Time Abate administrative waiver, or otherwise.
- Gather Relevant Information: If you are unable to pay your liability in-full within 30 days, collect financial documentation that you will likely be asked to produce, including: proof of income for the previous 12 months; proof of expenses for the previous 12 months; copies of bank, brokerage, and other financial statements for the previous 6 months; and a detailed list of all assets and liabilities. Realize that additional information may (but need not) be requested.
  - Be Professional: Stay calm and approach the interview and the revenue officer respectfully.
  - Be Honest and Transparent: During the interview, be honest and transparent about your financial situation. Provide accurate information and address any concerns raised by the revenue officer within the deadlines set during the interview. If you do not think you will be able to provide information by the date the revenue officer indicates, state so and propose an alternative timeline for providing the requested information.
  - Explore Payment Options: If you owe taxes, be prepared to discuss payment options. Explore payment plans (known as "installment agreements"), settlements (known generally as "offers in compromise"), or any other payment arrangement that may be suitable for your financial situation.
  - Understand the Consequences if an Agreement is Not Reached: It is important for taxpayers to understand that, if they do not reach an agreement with the revenue officer, the revenue officer may pursue enforced collection, including but not limited to the filing of a notice of federal tax lien, the levying of property, the garnishment of wages and/or Social Security benefits, and, in exceptional circumstances, the seizure of assets.
  - Document Agreements in Writing: If you reach any agreement during the interview, request written confirmation of the agreement to ensure clarity and avoid misunderstanding.

## **ISSUE THREE: Disaster Assistance to Improve the Taxpayer Experience**

**SOP Mapping:** 1.8, 2.3.

### **Executive Summary**

This issue was identified by the SB/SE Division to gather ideas on how to improve IRS assistance to taxpayers in disaster situations. The Division seeks ideas for delivering relief information more quickly to taxpayers in a Federally declared disaster area, as well as helping these taxpayers with certain tax-related activities, such as expediting a refund or changing an address. The Division also seeks ideas on new streamlined procedures for processing requests for additional time to replace property under Section 1033 on involuntary conversions.

The SB/SE Subgroup met twice with several IRS personnel from the SB/SE Division, the TS Division, and the Office of Chief Counsel. The meetings were extremely helpful in learning more about IRS actions to help disaster victims, the process for determining and announcing postponement dates for Federally declared disasters for which the Federal Emergency Management Agency (FEMA) issued a major disaster declaration and provided individual assistance, and some changes that the IRS was already implementing and working on to better assist taxpayers in a disaster area.

The IRS immediately put into place some of the suggestions we made at our meetings with IRS personnel, such as adding more information to IRS news releases (IR) about disaster relief to help practitioners request due date postponement relief for clients affected by the disaster due to the location of their records or their tax professional.

Our recommendations suggest additional avenues for getting information and relief to victims of Federally declared disasters and making the disaster tax relief provisions more transparent and understandable to further help victims and tax professionals.

### **Background**

Section 165(i) on disaster losses generally allows victims of a Federally declared disaster to claim any loss in the preceding year. For taxpayers affected

by a Federally declared disaster, Section 7508A, Authority to postpone certain deadlines by reason of Federally declared disaster, significant fire, or terroristic or military actions, allows the IRS to postpone the time for filing of tax returns, payment of taxes, and numerous other tax actions from the start of the disaster to a date specified by the IRS, which date may not exceed one year. Section 7508A(d) provides a mandatory 60-day postponement period for specified actions of qualified taxpayers (as defined at Section 7508A(d)(2)). Generally, the IRS postponement is for a period greater than 60 days.<sup>292</sup> All taxpayers in the disaster area get the same number of days of postponement. When FEMA makes a disaster declaration involving their Individual Assistance Program near or on a tax deadline, the IRS strives to issue the news release about disaster relief that day or within 24 hours when possible.<sup>293</sup>

Regulations under Section 7508A were last updated in June 2021 (T.D. 9950) to primarily address subsection (d) on the mandatory 60-day extension. In November 2021, Section 7508(d) was modified by the Infrastructure Investment and Jobs Act.<sup>294</sup> The regulations have not been updated to reflect these 2021 changes which can cause confusion in interpreting and applying Section 7508A(d).<sup>295</sup>

Rev. Proc. 2018-58 supplements the list of actions described in Section 7508A and lists over 100 “time-sensitive acts” that are postponed with an IRS

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<sup>292</sup> For example, with IR-2024-176 (June 27, 2024), the IRS postponed to November 1, 2024, various return and tax payment due dates for taxpayers in the area where storms occurred in Mississippi beginning on April 8, 2024; <https://www.irs.gov/newsroom/irs-provides-tax-relief-for-taxpayers-impacted-by-severe-storms-straight-line-winds-tornadoes-and-flooding-in-mississippi-various-deadlines-postponed-to-nov-1-2024>. All disaster relief postponement announcements and links to websites with additional disaster relief information can be found at the IRS website, Tax relief in disaster situations; <https://www.irs.gov/newsroom/tax-relief-in-disaster-situations>. Details of the IRS process of providing tax relief for disasters is also at IRM 25.16.1.5, Disaster Program Office Actions; [https://www.irs.gov/irm/part25/irm\\_25-016-001#idm139905183026960](https://www.irs.gov/irm/part25/irm_25-016-001#idm139905183026960).

<sup>293</sup> When a major disaster declaration is made by FEMA with individual assistance, and other requirements of Section 7508A(d) apply, a 60-day extension applies, even in advance of an IRS news release about postponed dates.

<sup>294</sup> P.L. 117-58 (Nov. 15, 2021), Sec. 80501.

<sup>295</sup> Also potentially adding to this confusion is the Tax Court’s decision in *Abdo*, 162 T.C. No. 7 (Apr. 4, 2024) which ruled that Treas. Regs. §301.7508A-1(g)(1) and (2) are invalid to the extent they limit postponement of time-sensitive acts to those postponed by the IRS under its authority under Section 7508A(a). This case involved regulations that are outdated after the 2021 law change to Section 7508A(d).

issuance of administrative disaster tax relief under Sections 7508 and 7508A. An example of one of the tax actions postponed with an IRS disaster relief announcement is a contribution to an IRA. Normally an IRA contribution must be made by April 15 to count for the prior tax year. This date is postponed to the date specified by the IRS in the disaster declaration.<sup>296</sup> Section 4.03 of Notice 2018-58 states that it does not list all postponed acts because postponement of a return due date “automatically” also postpones time to make elections and file forms (such as Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations) that are part of the postponed tax return.

In addition to information releases about postponed due dates and payments dates and other disaster tax relief, the IRS works with FEMA to get information to victims. The IRS also posts to social media and reaches out to media outlets in the area as well as legislative liaisons in the affected districts.

#### *Tax Challenges Disaster Victims May Experience*

Beyond needing more time to meet tax filing and payment obligations, disaster victims may face additional tax challenges. For example, a disaster such as tornado or fire can result in loss of records for taxpayers. The IRS provides advice on reconstructing records and obtaining transcripts of tax information.<sup>297</sup>

When a postponement date is October 15 or later, challenges can arise for some individuals. For example, individuals who are partners in a partnership or shareholders in an S corporation might not receive their Schedule K-1 until October 15 (or later) making it difficult to get the individual’s tax return filed on time and there is no ability to obtain an extension of additional time for an individual beyond October 15. When the postponed due date is shortly after October 15, taxpayers might assume that the due date for their Report of Foreign Bank and Financial Accounts (FBAR) form was also postponed. The IRS is not able to postpone that date as it is controlled by the Financial Crimes Enforcement Network (FinCEN) within the U.S. Department of the Treasury.

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<sup>296</sup> This rule at Section 219(f)(3) is listed as item No. 11 under Section 8, Employee Benefit Issues, in Rev. Proc. 2018-58.

<sup>297</sup> For example, see IRS, Reconstructing Records After a Natural Disaster or Casualty Loss; <https://www.irs.gov/newsroom/reconstructing-records-after-a-natural-disaster-or-casualty-loss>.

Some disaster victims may file their tax return before the postponed due date, but delay payment until the postponed due date. These taxpayers might erroneously receive a Notice and Demand from the IRS seeking payment.<sup>298</sup> In addition, taxpayers who file before the postponed due date but pay by the postponed due date are not able to use the Electronic Funds Withdrawal system that is only available at the time a return is filed so these taxpayers must mail a check to the IRS or use the IRS Direct Pay System website.

While postponement of due dates applies to most time-sensitive tax actions, it does not apply to all time-sensitive acts. Individuals and their tax preparers might file an extension to be sure that all dates are extended to the normal extension date (October 15 for individuals). If all dates were postponed, it would eliminate the need to also file an extension request (unless the postponed date precedes the extension due date). An extension only postpones filing of the return and not payment of tax or other actions that must be performed by the unextended due date. One action that is not postponed by Section 7508A or other Code sections is the time for obtaining a tax credit or refund of overpaid taxes within three years from the postponed date. For example, assume the IRS postpones the due date for a disaster victim's 2023 Form 1040 to June 15, 2024. If an affected individual does not file their 2023 return until June 15, 2027, or files an amended 2023 return by this date, they are not able to obtain a refund because they filed more than three years from the normal due date (unless they filed an extension).<sup>299</sup> This issue became apparent during the COVID-19 pandemic.

At the start of the COVID-19 pandemic, a Federally declared disaster, the IRS issued Notices 2020-18, 2020-20 and 2020-23 generally postponing return and payment due dates from April 15, 2020, to July 15, 2020. As later described in Notice 2023-21, these notices "*postponed* certain return filing due dates, those

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<sup>298</sup> See a summary of this issue that some taxpayers faced for 2023 disasters, in National Taxpayer Advocate blog post of July 12, 2023 on disaster relief issues; <https://www.taxpayeradvocate.irs.gov/news/nta-blog/nta-blog-cp-14-collection-notice-part-two/2023/07/>. Also, IR-2023-121 (June 29, 2023); <https://www.irs.gov/newsroom/irs-sends-special-mailing-to-taxpayers-in-certain-disaster-areas>.

<sup>299</sup> This issue is explained in the National Taxpayer Advocate's blog post of July 12, 2023; <https://www.taxpayeradvocate.irs.gov/news/nta-blog/nta-blog-cp-14-collection-notice-part-two/2023/07/>.

notices did not *extend* the time for filing the returns because a postponement is not an extension. As a result, the postponements did not lengthen the lookback periods under § 6511(b)(2)(A).” With Notice 2023-21, the IRS granted relief under Section 6511 to allow individuals to still obtain a refund or credit for their 2020 return if filed by July 15, 2023. This relief has only been provided for 2020. The National Taxpayer Advocate has recommended to Congress that Section 6511 be amended to eliminate the distinction between postponement and extension for the time period to obtain refunds or claim tax credits.<sup>300</sup>

Sometimes after a disaster the IRS issues a notice, such as Notice 2023-69, released after the 2023 Hawaii Wildfires, to explain the tax treatment of an employer allowing employees to make leave-based donations to a charity to help victims of the disaster. Such a plan allows the employee to forgo their leave with the employer making cash payments to the charity. Such donations must be made by a date specified in the notice (by December 31, 2024, for Notice 2023-69).<sup>301</sup> The notice concludes that there is no tax effect to the employee (no income or charitable contribution deduction) and the employer treats the payment to the charity as either a charitable contribution or business deduction depending on the particular circumstances of the transfer. However, such a notice is not released for most Federally declared disasters.

A taxpayer may generate a gain from certain disaster damage, such as when insurance proceeds exceed the basis of the destroyed property. Generally, under Section 1033 on involuntary conversions, a taxpayer has two years from the end of the year in which the gain is realized to acquire appropriate replacement property to defer the gain. If the taxpayer is unable to complete the replacement within two years, they may ask the IRS for additional time. This request is made

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<sup>300</sup> National Taxpayer Advocate, 2024 Purple Book, Recommendation #54, [Amend the Lookback Period for Allowing Tax Credits or Refunds to Include the Period of Any Postponement or Additional or Disregarded Time for Timely Filing a Tax Return](https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/national-taxpayer-advocate-2024-purple-book/); <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/national-taxpayer-advocate-2024-purple-book/>.

<sup>301</sup> For the Hawaii Wildfires that began August 8, 2023, the IRS postponed various tax return and tax payment due dates to February 15, 2024. See IR-2023-151 (Aug. 18, 2023); <https://www.irs.gov/newsroom/irs-hawaii-wildfire-victims-qualify-for-tax-relief-oct-16-deadline-other-dates-postponed-to-feb-15>.

separate from a tax return by sending the request to the IRS and waiting for a response (Treas. Reg. § 1.1033(a)-2(c)(3)). This process does not necessarily lead to an immediate response from the IRS as to whether they received the request or how long it might take to get an answer. The SB/SE Division asked the IRSAC if and how streamlined procedures for these requests can be processed.

### **Recommendations**

The SB/SE Division is focused on improving the taxpayer experience for taxpayers affected by Federally declared disasters. The IRSAC is pleased to have been asked by the Division for assistance with additional ideas to improve the taxpayer experience when taxpayers are affected by a Federally declared disaster. We offer the following recommendations to further assist the IRS in providing disaster relief and in helping disaster victims with various tax matters.

1. Expand Taxpayer Alerts and Assistance:
  - a. Utilize all resources to help disaster victims know of postponed tax actions and disaster tax rules. The IRS Stakeholder Liaisons and the Tax Outreach, Partnership & Education (TOPE) group have connections with many community and practitioner groups who can help distribute information. Be sure to stress with media outlets that the tax information needs to be promoted along with information from FEMA and other relief agencies and organizations.
  - b. Provide the disaster relief news releases to all VITA and TCE sites and Low-Income Tax Clinics in the disaster area.
  - c. Help VITA and TCE sites to remain open until the postponed filing date by asking volunteers as early as possible to do so and helping to secure a new site location if needed (elected officials in the disaster area, libraries and charitable organizations may be able to assist).
  - d. Keep Direct File open for taxpayers in the disaster area through the postponed due date.



2. Make Changes to Reduce Filing Errors and Problems That Can Occur With Postponed Due Dates
  - a. When the postponed due date for a disaster is October 15 or later, provide one additional month for individuals (or one less month for partnerships and S corporations), to better ensure that individuals receive Schedules K-1 prior to the due date of their individual income tax return. This matches the current filing due dates which for both the normal and extended due dates are one month shorter for passthrough entities. If it is determined that a legislative change is needed for this relief, we encourage the IRS to work with the Treasury Department and Congress to pursue this change.
  - b. When the postponed due date for a disaster is October 15 or later, work with FinCEN to also have the FBAR due date postponed to avoid confusion and provide consistency as many individuals and preparers assume that the FBAR due date was also postponed.
  - c. We encourage the National Taxpayer Advocate and others at the IRS to pursue a legislative change to Section 6511 to allow the postponed due date to also be the extended date to obtain tax credits or refunds (this is the 2024 Purple Book Recommendation #54 discussed earlier in this report).
  - d. Use taxpayer account information to avoid sending a Notice CP14, Notice and Demand, to a taxpayer who has filed their tax return but still has time to make their tax payment.
3. Issue Additional Information and Guidance About Disaster Administrative Tax Relief:
  - a. Explain postponement versus extension of dates on the existing websites about disaster relief and include whether disaster victims should also file an extension. While Rev. Proc. 2018-58 is helpful in listing all the postponed time-sensitive acts under Section 7508A, taxpayers and practitioners would greatly benefit in having a list of the acts that are *not* covered by the postponement.

- b. Issue a notice or regulations on the tax treatment of employers' leave-based donation programs that apply to all Federally declared disasters. The date for such donations to be made can be specified as the last day of the year following the disaster declaration.
  - c. Improve the process for requests for additional time to replace property under Section 1033, as allowed by Treas. Reg. § 1.1033(a)-2(c)(3). This process should include that the taxpayer making the request receive acknowledgement of receipt by the IRS within 10 days and an answer to their request within 30 days. These regulations and IRS disaster relief websites and publications should be updated to fully explain how and where requests are to be submitted and the timeline for processing them.
4. Add Functionality to Online Accounts to Help Disaster Victims:<sup>302</sup>
- a. Alerts should be posted in the online accounts of taxpayers with mailing addresses in the disaster area to let them know of the postponement date and IRS disaster resources. Public announcements about disaster relief should include reminders to taxpayers to access their online account for information and provide instructions on how taxpayers can activate their accounts including where they can access such help at nearby IRS or FEMA assistance centers.
  - b. Digitize the process under Treas. Reg. § 1.1033(a)-2(c)(3) to request additional time to replace damaged property under Section 1033. This process should allow taxpayers to submit the request through their online account. It should also provide taxpayers with an acknowledgment that the request was received, when a decision is likely and provide the IRS decision. We also suggest that these time frames be no longer than 30 days to best help disaster victims.

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<sup>302</sup> These recommendations for online accounts are in addition to those recommended in the General Report section.



**INTERNAL REVENUE SERVICE ADVISORY COUNCIL**

**Tax Exempt and Government Entities Subgroup Report**

**Brian Yacker, Subgroup Chair**

**Joseph Bender**

**Sam Cohen**

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**Jodi Kessler**

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**Cory Steinmetz**

## **INTRODUCTION**

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The IRSAC Tax Exempt & Government Entities (TE/GE) subgroup is a diverse group of seven members working collaboratively with representatives of TE/GE regarding a broad range of issues, including employee plans, exempt organizations, Indian tribal governments, state and local government entities and tax-advantaged bonds. The subgroup members include attorneys, certified public accountants and financial and benefit advisors. The TE/GE subgroup is grateful for the cooperation received from members of the Tax Exempt and Government Entities Division of the IRS and for the wonderful efforts of Brian Ward, our IRS Liaison, in producing this report.

Our report addresses the following topics:

1. Increasing Tax Parity for Tribal Government Issued Tax Exempt Bonds (Raised by the IRSAC)
2. TEOS and EO BMF Improvements (Requested by the TE/GE Division)
3. Improving Communications and Data Sharing Between IRS and Various State Agencies (Requested by the TE/GE Division)
4. Section 401(a) Individually Designed Plans Determination Letter Program (Requested by the TE/GE Division)
5. Template for Exempt Organizations to Seek Penalty Abatement for Late Filed Returns (Raised by the IRSAC)
6. Providing Submission Acknowledgements to Exempt Organization Filers (Raised by the IRSAC)

## ISSUE ONE: Increasing Tax Parity for Tribal Government Issued Tax Exempt Bonds

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SOP Mapping: None.

### Executive Summary

Sections 7871(c) and (e) and Treas. Reg. § 305.7871-1(d)(3) provide for the ability of Indian tribal governments to issue tax exempt bonds for activities that are customarily engaged in by state governments as “essential governmental functions” (“EGF” or “EGFs”). While the U.S. Supreme Court has held that promoting EGFs is a governmental function akin to other public purposes,<sup>303</sup> the IRS has interpreted the test narrowly making it all but impossible for Tribes to issue tax exempt bonds for economic development. This narrow IRS interpretation has resulted in significant market disparities. In 2020, Indian tribes issued \$39.6 million in tax exempt financing. States and local governments, however, issued over \$51 billion.<sup>304</sup>

A 2006 Government Accountability Office report (“GAO Report”) highlighted a wide range of financial support state and local governments provide under the EGF test.<sup>305</sup> The GAO Report found that states and local governments spend billions of dollars supporting projects for rental housing; roads and transportation; parking facilities; park and recreation facilities, including stadiums and arenas; golf facilities; convention centers; hotels; and gaming support facilities.<sup>306</sup> The IRS, however, has denied tax exemption to similar Tribal financings,<sup>307</sup> while also simultaneously raising concerns about its own narrow interpretation.<sup>308</sup> Updated

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<sup>303</sup> *Kelo v. City of New London*, 545 U.S. 469, 471 (2005).

<sup>304</sup> Matthew Gregg, *Separate but Unequal: How Tribes, Unlike States Face Major Hurdles to Access the Most Basic Public Finance Tools*, BROOKINGS: HOW WE RISE (Dec. 3, 2021); <https://www.brookings.edu/articles/separate-but-unequal-how-tribes-unlike-states-face-major-hurdles-to-access-the-most-basic-public-finance-tools/>.

<sup>305</sup> GAO, *Federal Tax Policy – Information on Selected Capital Facilities Related to the Essential Governmental Function Test*, GAO-06-1082, p. 1 (Sept. 13, 2006); <https://www.gao.gov/products/gao-06-1082>.

<sup>306</sup> *Id.* at 4-5.

<sup>307</sup> FSA 200247012 (Aug. 12, 2002) (advising the construction and operation of golf courses may be commercial in nature); TAM 200704019 (Jan. 26, 2007) (concluding the construction of two convention centers were not customarily conducted by state and local governments).

<sup>308</sup> FSA 200247012 (Aug. 12, 2002) (“Generally, under the § 115 standard, there is no specific restriction on commercial enterprises of state and local governments. Thus, as modified, the only

guidance is needed allowing Indian Tribes to use tax exempt financing for economic development activities customarily financed by states and local governments, including the types of projects set out in the GAO report.

### **Background**

Section 7871 treats an Indian tribal government as a state for certain specified purposes, including issuing tax exempt bonds pursuant to Section 103, which provides an income tax exemption for state and local bonds, subject to certain limitations. This section was enacted as part of the Indian Tribal Governmental Status Act of 1982 (the “Act”) (P.L. No. 97-473). Section 7871(c) requires that if a tribal government is going to issue tax exempt bonds, “substantially all of the proceeds...are to be used” for EGFs. However, EGF was not defined in the initial legislation.

In 1984, the U.S. Department of Treasury issued temporary and proposed regulations under the Act.<sup>309</sup> The regulations were to be in place for 1983 and 1984.<sup>310</sup> However, the Federal Register notice provided that “[t]he temporary regulations will remain in effect until superseded by final regulations on this subject.”<sup>311</sup> Treasury has not issued final regulations as of August 2024. The regulations provide that EGF means an activity that is (1) eligible for funding under 25 U.S.C. Section 13, (2) eligible for grants or contracts under 25 U.S.C. Section 245(f), or (3) an EGF under Section 115.

The reference to Section 115 is particularly important. The IRS has issued multiple pieces of guidance concluding that EGF under Section 115 encompasses

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question under [the regulation] may be whether the activity being financed is a customary activity of state and local governments).

<sup>309</sup> Treas. Reg. § 305.7871-1.

<sup>310</sup> Treas. Reg. § 305.7871-1(f).

<sup>311</sup> 49 Fed. Reg. 19302 (May 7, 1984).

economic development endeavors<sup>312</sup> (and commercial activities).<sup>313</sup> Further, in *Kelo v. City of New London*,<sup>314</sup> the U.S. Supreme Court stated that promoting EGF “is a traditional and long-accepted governmental function and there is no principled way of distinguishing it from the other public purposes the Court has recognized.”<sup>315</sup>

The Revenue Act of 1987 (P.L. 100-203 (Dec. 22, 1982)) added subsection (e) to Section 7871, which provided a definition for EGF. The definition includes that it “shall not include any functions which are not customarily performed by State and local governments with general taxing powers.” The legislative history contains narrow interpretative language: the “issuance of bonds to finance commercial or industrial facilities (e.g., private rental housing, cement factories, or mirror factories)...is not included within the scope of the essential governmental function exception.”<sup>316</sup> The report also contained examples of what the committee believed were essential governmental functions customarily performed by states and local government: schools, streets, sewers,<sup>317</sup> roads and government buildings,<sup>318</sup> as well as lodges customarily owned and operated by state park or recreation agencies.<sup>319</sup>

Although the Revenue Act of 1987 amended the statute, the temporary and proposed regulations themselves have not been amended, updated, or withdrawn; the regulations are still in effect. When issuing guidance, the IRS has given significant weight to the Revenue Act’s legislative history and overlooked the still-in-effect regulations.

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<sup>312</sup> See e.g., PLR 200808025, 2008 WL 467934 (Nov. 9, 2007) (promoting economic development is an essential governmental function); PLR 200426017, 2004 WL 1427582 (Mar. 10, 2004) (promoting economic development and relief of unemployment are essential governmental functions for purposes of § 115(1)); PLR 200736022, 2007 WL 2570483 (May 16, 2007) (stimulating economic development is an essential governmental function for purposes of Section 115).

<sup>313</sup> Rev. Rul. 72-194 (concluding money expended to promote tourism is for an exclusively public purpose); PLR 200640001 (Oct. 6, 2006) (concluding bond financing for stadiums is an exclusively public purpose).

<sup>314</sup> 545 U.S. 469, 485 (2005).

<sup>315</sup> *Id.* at 471.

<sup>316</sup> H.R. Rep. No. 100-391, 100th Cong. 1st Sess. at 1139 (1987).

<sup>317</sup> *Id.* at 16-17.

<sup>318</sup> *Id.* at 1139.

<sup>319</sup> *Id.* at 1012, n. 5.



For instance, in 2002, the IRS concluded that the construction and maintenance of golf courses was commercial in nature and did not qualify for tax exemption under the EGF test.<sup>320</sup> The IRS, however, also noted concerns with its own interpretation and wondered if the EGF test should be limited to activities customarily engaged in by state and local governments:

[the regulation] defines [EGF] the same under § 7871 and § 115. Congress modified [the regulation] but [it] was not repealed. Thus, there is an argument that for purposes of § 7871, we continue to apply the § 115 standard modified by the customarily requirement imposed by § 7871(e). Generally, under the § 115 standard, there is no specific restriction on commercial enterprises of state and local governments. Thus, as modified, the only question under [the regulation] may be whether the activity being financed is a customary activity of state and local governments.<sup>321</sup>

This interpretation is both the more correct position and provides greater parity between governments. Further, this interpretation is supported by the Department of the Treasury as a policy matter. In 2011, Treasury provided recommendations to Congress favoring the ability of Indian tribes' use of tax-exempt financing for economic development.<sup>322</sup>

As a starting point, we encourage the IRS to review the 2006 GAO Report that highlighted a wide range of financial support provided by state and local governments under the EGF test.<sup>323</sup> The GAO Report found that state and local governments have spent billions supporting the activities below:

- Rental housing
- Roads and transportation
- Parking facilities

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<sup>320</sup> FSA 200247012 (Aug, 12, 2002).

<sup>321</sup> FSA 200247012 (Aug, 12, 2002).

<sup>322</sup> *Report and Recommendations to Congress regarding Tribal Economic Development Bond provision under Section 7871 of the Internal Revenue Code*, Dept. of the Treasury (Dec. 2011).

<sup>323</sup> GAO-06-1082, *supra*.

- Park and recreation facilities, including stadiums and arenas
- Golf facilities
- Convention centers
- Hotels
- Gaming support facilities<sup>324</sup>

### **Recommendations**

1. Propose adding a recommendation for the IRS Priority Guidance Plan to update guidance interpreting the essential governmental functions (EGF) standard and support updated guidance through appropriate authorities, including the Department of the Treasury.
2. Issue updated EGF guidance permitting Indian tribes to issue tax exempt financing for economic development customarily permitted for states and local governments, including the categories set out in the 2006 GAO Report.

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<sup>324</sup> *Id.* at 4-5.

## **ISSUE TWO: TEOS and EO BMF Improvements**

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**SOP Mapping:** 4.2, 4.3, 4.5.

### **Executive Summary**

The IRS Tax Exempt & Government Entities (TE/GE) Division requested that the IRSAC provide input on how it can improve its two most essential public domain databases, Tax Exempt Organization Search (TEOS) and the EO Business Master File (EO BMF). TEOS offers both a Tax Exempt Organization Search Tool<sup>325</sup> as well as Tax Exempt Organization Search bulk data downloads.<sup>326</sup> EO BMF provides comma-separated values (CSV) files of exempt organization information for download by state of organizations as well as statistical data.<sup>327</sup>

### **Background**

Section 6104 of the Internal Revenue Code requires the IRS to furnish documents to the public, including the application of certain tax exempt entities and the annual returns of such entities. The IRS provides the TEOS and EO BMF databases to fulfill the Section 6104 requirements.

The IRSAC commends the TE/GE Division for the information available through the TEOS and EO BMF databases and the efforts to provide the information under Section 6104 in a clear and concise manner. The IRSAC reviewed the information available on TEOS and EO BMF to assess the databases for potential improvements as requested by the TE/GE Division.

In reviewing the information and items available on the TEOS organization search tool to third-party websites with similar information, it was noted that not all the annual returns filed were posted to TEOS even though they were available through third-party websites. This information on third-party websites is obtained

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<sup>325</sup> IRS, Search for tax exempt organizations: <https://www.irs.gov/charities-non-profits/search-for-tax-exempt-organizations>.

<sup>326</sup> IRS, Tax Exempt Organization Search bulk data downloads; <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search-bulk-data-downloads>.

<sup>327</sup> IRS, Exempt Organizations Business Master File Extract (EO BMF); <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>.

from the IRS XML data and stylesheets, and this is also available for the IRS to post in a similar manner.

The TEOS bulk data download information includes IRS Publication 78 data listing organizations eligible to receive tax-deductible charitable contributions, organizations whose tax exemption has been automatically revoked for failure to file a Form 990-series annual return for three consecutive years, and the most recent 990-N (e-Postcards) and Form 990 series filings on record. The IRS improved public usability of Form 990 series data by providing comprehensive descriptive information (metadata), including lists of databases, dataset guides, data dictionaries, indices, annotated forms, redacted schemas, and FAQs on the TEOS Improvements page,<sup>328</sup> all of which are helpful to the public. The Form 990 series files are particularly large and are available by year in multiple separate files. In order to find a particular organization each file must be downloaded and searched. The 2024 XML includes an index with the zip file location, which is useful. The addition of key word searchability would improve the ability to find relevant information in the bulk data download files.

The EO BMF is a cumulative file containing the most recent information the IRS has for exempt organizations. The EO BMF provides CSV files of exempt organizations by state of incorporation due to file size limitations, which, according to the webpage, may or may not represent the state(s) in which an organization undertakes active operations as it is based on the address provided by the organization. In many cases, a person looking for a particular organization may not know its state of incorporation. It would be helpful to organize the EO BMF data by the organization's legal name or have an index to make finding the correct data more efficient. The files could be separated to meet size limitations and do not necessarily need to be by single letter of the alphabet (e.g. a file for organizations with names starting with Aa – Am, and another file for organizations with names starting with An – Az).

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<sup>328</sup> IRS, TEOS Improvements; <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search-teos-teos-improvements>.

Finally, as it is essential to ensuring that the data available accurately reflects the most recent information the IRS has received, procedures are needed to ensure that regularly updated data shows more immediately on the IRS website, such as name or address changes and short tax years.

### **Recommendations**

1. Update documents and data available on both TEOS and EO BMF with a full and complete posting of all documents on a timely basis (at a minimum, monthly) to the extent practicable.
2. Investigate and implement operational improvements to ensure all available data is uploaded and available on the IRS websites in a timely (at a minimum, monthly) and consistent manner and information posted is a complete representation of the most recent information the IRS has for tax exempt organizations. This should ensure the data actually appears on the IRS webpages timely, including contemporaneous updates for name or address changes and short tax years.
3. Allow for key word searchability for the data available on the TEOS bulk data download webpage.
4. Organize the EO BMF CSV files by organization name as opposed to state of the organization's incorporation to assist the public in efficiently finding information.

## **ISSUE THREE: Improving Communications and Data Sharing Between IRS and Various State Agencies**

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**SOP Mapping:** 4.5, 4.8.

### **Executive Summary**

The IRS is looking to strengthen information sharing between state partners by fostering a more robust exchange of information. This will benefit both parties as information sharing can move between the parties. There are numerous outlets now where state partners receive information from the IRS, but the focus of this report and our recommendations is information sharing regarding exempt organization information and providing such to the state entities responsible for regulating them.

### **Background**

Currently, the IRS has information sharing Memoranda of Understanding (MOUs) with approximately seven states for exempt organization information. There are a few hurdles to wider acceptance; knowledge of the program, MOU language not meeting state standards, and the data protections being put in place. Knowledge of this program can be remedied by leveraging the contacts that the IRS already has within numerous state agencies. Organizations, like the National Association of State Charity Officials (NASCO), will also be a useful ally.

MOU language will need to have some flexibility to align with state contracting or operational requirements. With that, the IRS will need to make sure the information can be transmitted in a common and useful way. Using a Secure File Transfer Protocol connection or similar safeguards should be universally acceptable. As to the actual data, flexibility in how it can be transmitted (comma, tab delimited, etc.) would also be beneficial.

The last difficulty is the classification of the data. Currently, the IRS is providing this information under Section 6104(c) of the Internal Revenue Code, which requires that information be protected under the rules in Section 6103, even though much of this information is also publicly available. The state agencies, or specific departments that need this information are typically not prepared to comply

with the Section 6103 requirements. Quite often, this function is housed within the state attorney general's office, who are performing a law enforcement function at their core. They do not need an entire return because a limited data set would typically meet their needs and support their mission. The most important data being the loss of charitable status, when that occurred, and the failure of filing required documents or returns. The offices typically needing this information are not state revenue agencies who would have this expertise. As such, the requirements set forth in Section 6103 have hindered participation.

Note: The Electronic Tax Administration Advisory Committee (ETAAC) also made some related recommendations in their 2024 report (see Recommendation 3, Promote greater information sharing with states and industry partners of homogenized tax data, metrics, year-over-year metrics, and seasonal information).<sup>329</sup> This recommendation should be incorporated here as well. Specifically, they recommend that the IRS partner with states to address criminal action enforcement, and that the IRS hold regular meetings with the Federation of Tax Administrators (FTA).

### **Recommendation**

Identify state-level contacts who are regulating charitable organizations, via NASCO or current state agency contacts and provide the shared information in a flexible manner to account for the varying needs across the state regulators and as an investigative disclosure under Section 6103(k)(6) of the Internal Revenue Code.

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<sup>329</sup> ETAAC, *Annual Report to Congress*, June 2024, pp. 29 to 30; <https://www.irs.gov/pub/irs-pdf/p3415.pdf>.

## **ISSUE FOUR: Section 401(a) Individually Designed Plans Determination Letter Program**

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**SOP Mapping:** 1.7.

### **Executive Summary**

The Determination Letter Program (Program) is a process set out in Rev. Proc. 2022-40 pursuant to which the IRS confirms that a 401(a) retirement plan is qualified in written form. Until 2017, plan sponsors of individually designed 401(a) plans could apply for a determination letter every five years on an assigned cycle based on the plan sponsor's EIN. The determination letter would take into account all required and discretionary amendments to the plan since the prior letter. The cycle system for individually designed plans ended in 2016, and, with limited exceptions,<sup>330</sup> plan sponsors of individually designed 401(a) plans can currently apply for a determination letter at initial qualification of a plan and at plan termination only.<sup>331</sup> As a result, a plan sponsor that amends an individually designed 401(a) plan can no longer apply for or receive an IRS determination letter that the changes made by the amendment do not affect the tax-qualified status of the plan.

Employee Plans (EP), a department of the Employee Plans Office of the Tax Exempt and Government Entities (TE/GE) Division of the IRS, is responsible for overseeing the Program. EP is contemplating reopening the Program to individually designed 401(a) plans on a limited, one-time basis (Expanded Program). Specifically, the Expanded Program would allow a plan sponsor of an individually designed 401(a) plan that has been amended for the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 and the SECURE 2.0 Act of 2022 to submit a request for a determination letter related to the amendments. EP asked the IRSAC for: (i) general feedback on the Expanded Program; (ii) suggestions on how to structure the Expanded Program to minimize resource strain; and (iii) input as to whether the Expanded Program should cover

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<sup>330</sup> Rev. Proc. 2019-20 provided for a limited expansion of the Program to cover (i) for a limited period, individually designed statutory hybrid plans and (ii) on an ongoing basis, individually designed merged plans.

<sup>331</sup> Rev. Proc. 2016-37.



amendments in addition to those addressing the SECURE Act and SECURE 2.0 Act and, specifically, whether it should cover all legally required and discretionary amendments since the plan's last determination letter through and including SECURE 2.0 Act.

### **Background**

Historically, the Program was an extremely valuable and popular process by which plan sponsors could ensure written plan document compliance for their qualified plans. Because it was best practice to file plans for a determination letter, plan sponsors generally underwent a comprehensive legal review of their plan document, as well as consistency of that plan document with actual operation, at least every five years. Therefore, the Program's cycle system carried value significantly beyond securing a determination letter from the IRS, in that it ensured that plan sponsors closely focused on their plan documents and operation on a regular and consistent schedule, generally enabling timely discovery of plan document and operational failures.

While many plan sponsors can secure written plan document compliance by adopting an IRS pre-approved written plan document, which is generally a more efficient and cost-effective process for both the plan sponsor and the IRS than filing a determination letter request, not all plan sponsors can take advantage of a pre-approved plan document. This is true, for example, of large government systems that generally have very complicated plan designs dictated by state statute, and church plans administered by denominational benefit boards with very specific plan designs dictated by church polity. As another example, plan sponsors with multiple recordkeepers, including governmental plans required to approve multiple recordkeepers by state statute, are not always able to accommodate different recordkeeper requirements in a pre-approved plan document or may not want to adopt the pre-approved plan document of a single recordkeeper. These plan sponsors have been unable to secure an IRS determination letter since at least 2016.

EP provided the following determination letter data for the five fiscal years prior to the closing of the cycle system under the Program:

	FY12	FY13	FY14	FY15	FY16	FY17	Total/ Average
Filings	5,980	7,540	6,763	6,747	7,563	3,533	38,126
Closed	11,706	9,636	10,967	7,786	5,527	6,620	52,242
HPC Average*	8.9	9.2	8.1	11.1	12.3	10.6	10.0
Cycle Time**	622	815	584	523	436	481	577

\*"HPC Average" is the average hours it takes per case to close a determination letter request.

\*\*"Cycle time" is the number of days it takes to close a determination letter application from the date it is received by EP.

In all of these cases except one, the IRS ultimately issued a favorable determination letter to the plan sponsor.

The IRSAC strongly supports EP's proposed Expanded Program which would allow plan sponsors of individually designed 401(a) plans to request a one-time (in addition to the initial determination letter) determination letter that their plan documents are qualified in written form. The IRSAC believes that the Program serves a critical role in helping plan sponsors maintain compliant documents as they adopt discretionary and legally required changes to plan terms. Determination letters give plan sponsors assurance of compliance in written form, but also can be important for plan participants, insurers, and bond and credit rating agencies.

### **Recommendations**

To maximize the efficiency of the Expanded Program and minimize resource strain, the IRSAC recommends the following.

1. Continue to provide plan sponsors with the tools to ensure that their documents are compliant before they file a determination letter request, including:
  - Annual Operational Compliance Lists;
  - Annual Required Amendments Lists; and

- Model language for the required amendments to facilitate plan drafting, e.g., for required amendments under the SECURE Act and SECURE 2.0 Act.

These materials will help to ensure that the plan sponsor adopts all required amendments in a timely manner and that the written plan terms will meet the IRS requirements for compliant plan language.

2. Make the following changes to the new electronic submission process for determination letters to facilitate EP's review of the submitted information.
  - Update Form 5300 to include information lines that are specific to required and discretionary amendments, including requiring citations as to where the item is addressed in the plan document(s).
  - In lieu of providing historical plan documents, allow plan sponsors the option to instead submit a version of the current plan document that is redlined against the prior plan document, allowing EP reviewers to more easily identify where changes have been made. EP reviewers can still request the prior plan documents if determined necessary or helpful to verify a change.
  - Incorporate a process by which self-corrections and corrections through the voluntary correction program to plan document language (prospective or retroactive) can be voluntarily disclosed and documented. The voluntary disclosure of a self-correction would not be for the purpose of seeking IRS approval of the self-correction, but to afford an opportunity to provide information about changes in plan document terms that may benefit from explanation.
  - Require a restated plan document as part of the submission for non-governmental plans, both to aid EP in its review and to ensure that plan sponsors are periodically restating their plan documents rather than continuously amending them. The IRSAC

does not recommend this approach for governmental plans since the governmental plan terms are frequently set forth in state statute only.

3. Stagger initial eligibility for submissions over a period of years based on the plan sponsor's EIN to better manage review of the submissions.
4. Increase the submission fee for filing a determination letter request for large plans. The IRSAC believes that increasing the fee would encourage plan sponsors of qualified plans that could be stated on a pre-approved prototype plan document to do so and would not dissuade other plan sponsors from filing a submission due to the significant benefits in securing a determination letter.
5. Consider contracting with a pool of tax/benefit lawyers who would be required to complete a training/certification process and would be responsible for an initial review of submissions. Each initial reviewer could be provided with a checklist of required plan provisions/sample language so that there is consistency in plan reviews. An IRS agent could be assigned to supervise a group of these initial reviewers, which would include answering questions and performing a final review for quality control.
6. Address the scope of the Expanded Program by covering all amendments, discretionary and required, since the last determination letter in the determination letter ruling under the Expanded Program. It will be valuable to plan sponsors to be able to secure a determination letter on the many discretionary and required changes under the SECURE Act and SECURE 2.0 Act. However, the IRSAC believes that it will be far more valuable to plan sponsors if that determination letter covered all discretionary amendments made since the last determination letter. For example, there has been a significant amount of activity on the state legislative level with respect to governmental plan changes, and governmental plan sponsors would greatly benefit from a determination letter that included a ruling on those statutorily mandated

changes, in addition to those made under the SECURE Act and SECURE 2.0 Act.

## **ISSUE FIVE: Template for Exempt Organizations to Seek Penalty Abatement for Late Filed Returns**

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**SOP Mapping:** 2.2, 2.3.

### **Executive Summary**

Subject to limited exceptions, exempt organizations are required to file annual returns under Section 6033. If an exempt organization fails to file its annual return, it can be subject to late filing penalties, and if the failure to file occurs for three consecutive years, the exempt organization may lose its exempt status.

A non-filing exempt organization may seek to have the late filing penalties abated if its failure to file was due to reasonable cause. There is established precedent that establishes what will be considered reasonable cause to have late filing penalties abated.

As a practical matter, many less sophisticated exempt organizations are not aware of their ability to seek a penalty abatement and the specifics on how to do so, causing them to simply pay the penalty.

We suggest that the IRS create a template document that would outline in plain English the requirements to seek penalty abatement, and this template document would be sent to exempt organizations at the same time the IRS sends a notice of non-filing.

### **Background**

Under Section 6033, organizations that are exempt from income tax are still required to file annual returns. The type of return depends on the amount of the exempt organization's gross receipts. If gross receipts are less than \$50,000, then the organization can file the Form 990-N; if an organization has gross receipts less than \$200,000 and total assets less than \$500,000, then it can file the Form 990-EZ. If the exempt organization does not qualify for these lower reporting thresholds, it is required to file a Form 990.

If the exempt organization fails to file an annual return, it is subject to late filing penalties pursuant to Section 6652. For smaller exempt organizations (annual gross receipts less than \$1,208,500 for 2023 tax year), the penalty is \$20 for each

day the return is filed late with a cap of the lesser of \$12,000 or 5% of the gross receipts of the organization for the year. For exempt organizations with annual gross receipts above that threshold, the penalty is \$120 for each day the return is filed late (with a \$60,000 maximum penalty for any one return).

Section 6652(c)(5) provides, however, that the late filing penalty may be abated for reasonable cause. There is an established body of precedent outlined in the Treasury Regulations, IRS guidance and judicial decisions on what constitutes reasonable cause for a late filed return. The regulations also provide the steps an exempt organization should undertake to seek abatement, including providing a written statement that outlines the failure, the cause of the failure and what reasonable steps the exempt organization took to attempt to comply. The exempt organization is also directed to outline what steps it is undertaking to avoid a repeat of the late filing going forward.

While this information is available in various locations, the concern is that exempt organizations that are not well advised or do not have sufficient resources to educate themselves on possible options for penalty abatement will simply pay this late filing penalty. The IRSAC believes it is reasonable to conclude that less sophisticated exempt organizations without sufficient resources to seek a penalty abatement in the case of a late filed return are also more likely to fall into the category of late filers.

### **Recommendation**

Prepare a template document that can be sent to exempt organizations with the IRS Form 990 late filing notice. This template document should:

- Outline the ability of the exempt organization to seek an abatement from the late filing penalty.
- List the established requirements for seeking late filing penalty abatement.
- Include a checklist of documents and steps to seek abatement (written statement of the facts submitted under penalty of perjury, steps the organization is taking to prevent non-filing from occurring in the future, etc.).

The IRSAC notes that much of the information that would comprise the template already exists in various locations, and the goal is to compile all of this existing information in an easy-to-read document that will be sent to the late filing exempt organization together with the penalty notice. The IRSAC notes that this type of template/checklist would be useful to other types of taxpayers as well.



## **ISSUE SIX: Providing Submission Acknowledgements to Exempt Organization Filers**

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**SOP Mapping:** 1.11.

### **Executive Summary**

When filing certain “non-tax” forms (for example, Form 4506 (Request for Copy of Tax Return), Form 5768 (Election/Revocation of Election By an Eligible Section 501(c)(3) Organization to Make Expenditures To Influence Legislation), Form 8822-B (Change of Address or Responsible Party – Business), or correspondence (for example, reasonable cause penalty abatement letters) with the IRS, exempt organizations are often unsure regarding (1) whether the IRS received their submission and (2) what the general processing/review time will be before the exempt organization receives a response from the IRS. This oftentimes leads to exempt organizations worrying that their submission was not received by the IRS, creating inefficiencies for both the exempt organization and the IRS. For example, exempt organizations often attempt to follow-up with the IRS to ascertain the status of their submissions.

### **Background**

There are approximately two million exempt organizations actively operating in the United States. Many of those exempt organizations need to file forms with the IRS which are not related to their annual filing of their Form 990 series information tax return. Some of these other forms include Form 4506, Form 5768, and Form 8822-B.

Additionally, many exempt organizations also send various communications to the IRS, including reasonable cause penalty abatement letters, Notice responses, and private foundation scholarship program approval requests.

Currently, the IRS does not provide filing/processing acknowledgements for any of the forms or other submissions referenced immediately above.

**Recommendation**

Upon receipt of any non-information tax return submission, provide the submitter with an automated acknowledgement of receipt (preferably within 30 days), including an estimated time frame when the IRS anticipates the processing of such submission.



**INTERNAL REVENUE SERVICE ADVISORY COUNCIL**

**Taxpayer Services Subgroup Report**

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## INTRODUCTION

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The IRSAC Taxpayer Services subgroup is a collaborative group of seven members including CPAs, enrolled agents, attorneys, and volunteer income tax assisters.

The members' collective tax experience includes accounting and tax return preparation (ranging from solo practitioners to large, commercial tax preparation firms), tax planning and advice, and representation of individual and business taxpayers from many segments of our society.

The Taxpayer Services spectrum covers a large and diverse population of taxpayers with a wide range of income and tax return complexity. Taxpayer Services encompasses tax return processing, forms publication, electronic products and services, preventive and corrective identity theft programs, and the overall administration for delivering timely, accurate, and excellent service while reducing taxpayer burden.

During this past year, our subgroup worked closely with our IRS Taxpayer Services colleagues to provide feedback and recommendations to help improve taxpayer service, compliance, and administration.

Our report addresses the following four topics:

1. Voicebots and Chatbots (Requested by Taxpayer Services)
2. Volunteer Income Tax Assistance (VITA) for the Gig Economy (Requested by Taxpayer Services)
3. Alternatives to Wet Ink Signatures for Forms 2848 and 8821 (Raised by the IRSAC)
4. Expanding and Accelerating Transcript Access (Raised by the IRSAC)

We thank Taxpayer Services Commissioner Ken Corbin, and the many IRS personnel with whom we've worked closely this year for their cooperation and assistance in developing this report and for their recognition of the Subgroup as an integral resource. We also express our sincere gratitude for Cindy Jones and Tekila Gray, and their commitment to sharing their knowledge with the IRSAC.

We especially thank our liaisons from the National Public Liaison Division, including Maria Salazar, for their guidance and facilitation of our service, providing information, advice, and access to essential IRS personnel needed to develop our report.

## **ISSUE ONE: Voicebots and Chatbots**

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**SOP Mapping:** 1.1, 1.2, 1.4, 1.12.

### **Executive Summary**

The Taxpayer Services (TS) Division requested that the IRSAC provide its perspective on the implementation and usefulness of artificial intelligence (AI)-powered voicebots and chatbots to enable another avenue for providing services to taxpayers. IRSAC members tested voicebot and chatbot functionality and provided feedback about the specific test results directly to Taxpayer Services. This report contains general recommendations regarding the overall bot strategy intended to provide a better and more accurate customer experience.

### **Background**

The United States has a complex tax system. As a result, millions of taxpayers, and those who serve them, contact the IRS to get their questions answered using in-person, online (for example, websites), and telephone support channels. The IRS has relied on telephone support as a critical channel for taxpayers and is in the initial stages of providing chatbot support to taxpayers.

One of the IRS's new capabilities is a speech recognition bot that answers calls on the main individual phone line (1-800-829-1040). In contrast to the previous technology, the new capability allows taxpayers to ask the bot questions and the bot directs the call or provides an answer.

A second new capability is chatbot access on certain pages of the IRS website that provides taxpayers a limited menu of choices and allows them to interact directly with a chatbot.

Generally, bot technology attempts to answer taxpayer questions, direct the taxpayer to helpful information on IRS.gov or their online account, or enable them to access information about their return status or refund status. The operation of these bots can be improved over time as the knowledge base expands and feedback from more taxpayers becomes available.

The current voicebot and chatbot functionality mostly provides unauthenticated services, which includes answering general questions that do not require taxpayer identity proofing or authentication. There is limited access to authenticated services which provide taxpayer-specific guidance relating to balance due accounts, refund status/amounts and other personalized services. Given their relative value, the IRSAC encourages the IRS to continue its efforts to develop authenticated voicebot and chatbot applications that can deliver more personalized digital services that taxpayers seem to value most.

It is critical that taxpayers are able to exit the bot experience and reach live assistance through a phone or chat assistor during normal hours of operation. By ensuring an adequate handoff between services, the IRS will provide a failsafe experience and allow live assistants to focus on service to taxpayers who cannot self-help using bot assistance. IRSAC testers found that many options in the voicebot and chatbot interfaces were not designed to provide the taxpayer a direct answer, but instead referred the taxpayer to general information that may not be useful to the taxpayer's specific question.

Currently, the IRS partners with multiple vendors for bot technology. This creates parallel bot channels, multiple entry points, may create taxpayer confusion, and may prevent the bots from optimal learning of taxpayers' common questions and satisfactory responses. The current multiple vendors set up may limit the opportunity for expanding the use of machine learning (ML) and AI algorithms to perform tasks efficiently and effectively, matching the pace of demand from taxpayers. To achieve optimal learning, AI systems require robust infrastructure and substantial data volumes to maintain speed and scale. Bot deployments are not static and should be continuously monitored. Both voicebot and chatbot systems should be load tested and properly scaled in anticipation of peak volume periods. IRSAC testers noted the chatbot responses currently have a lag time and the interaction was not frictionless.

Members of the IRSAC who tested bots also noted that overall improvements to the user interface would benefit the chatbot experience for taxpayers, including looking at new font colors, increasing font size, and sizing the



chatbot window so replies could be read in full on the screen. The IRSAC testers also noted that selecting options in the interface seemed easier than typing responses to the chatbot.

### **Recommendations**

1. Create a single entry point available from all applicable pages on the IRS website that will guide taxpayers through all chatbot functionality, rather than separate entry points.
2. Offer a referral to a live agent or a call back after a taxpayer makes unclear requests multiple times.
3. Provide taxpayers an estimate of waiting time when the live assistance referral is made. Test chatbot system capacity and develop scalable capability to ensure chatbot response times meet Service Level Agreements (SLAs) during peak volume periods; test response times with users to determine appropriate SLAs.
4. Improve accessibility to the chatbot user interface by implementing font color, font size, and window responsiveness improvements and follow industry user experience standards,<sup>332</sup> to ensure that all taxpayers can easily read and interact with the chatbot.
5. Conduct additional testing of the chatbot focused on specific demographics including taxpayers with disabilities and foreign language speakers.<sup>333</sup> This continuous feedback loop will allow the IRS to fine tune the tool.
6. Provide on-screen guidance to help taxpayers understand best practices to interact with the IRS chatbot.
7. Utilize large language learning models within the chatbot to continuously improve taxpayer experience.
8. Invest in improving the AI capabilities of the chatbot so that taxpayers' questions are answered directly instead of directing the taxpayers to read

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<sup>332</sup> This includes standards in effect under the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973.

<sup>333</sup> Languages the IRS supports in other contexts are available at <https://www.irs.gov/help/languages>.

instructions and information related to their questions from IRS webpages. For example, if the taxpayer asks: "how can I change my address" or "how can I amend my tax return," the taxpayer should get a straight narrative answer instead of getting options to select from and at the end having to read instructions on IRS webpages.

## **ISSUE TWO: Volunteer Income Tax Assistance (VITA) for the Gig Economy**

**SOP Mapping:** Objective 1.

### **Executive Summary**

The Taxpayer Services subgroup researched how Volunteer Income Tax Assistance (VITA) can help self-employed gig workers with their Form 1040 Schedule C. The VITA program is regulated by the Stakeholder Partnerships, Education and Communication (SPEC) office within the Taxpayer Services Division of the IRS.

We propose changing VITA procedures in the following areas to allow VITA volunteers to serve certain self-employed gig workers: business use of home, business losses, and vehicle expenses (focusing on leasing, depreciation, and mileage substantiation).

Some VITA sites in New York City recently participated in the Urban Upbound SE Pilot program (coordinated by the New York City Department of Consumer and Worker Protection and Office of Financial Empowerment) allowing expanded services for gig workers. We understand that the results and feedback were positive.

### **Background**

Currently, VITA sites generally do not serve<sup>334</sup> taxpayers with a sole proprietorship (Schedule C) that generates a loss, involves any type of depreciation deduction, or where there is business use of a home. This restriction disqualifies the majority of otherwise qualifying self-employed taxpayers from using VITA services.

#### *The Business Use of Home (aka Home Office Deduction)*

Deduction for business use of a home is currently out of scope for a VITA site. In 2013 the IRS issued Revenue Procedure 2013-13 which allows a simplified option for calculating deductible expenses for the business use of a home. Under

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<sup>334</sup> Pub. 3676-B (EN-SP) at <https://www.irs.gov/pub/irs-pdf/p3676bsp.pdf>.

the simplified method, the taxpayer is permitted \$5 per square foot, up to a maximum of 300 square feet. No depreciation is calculated, and no record keeping is required (other than to prove exclusive use of the space as a home office). The IRSAC believes that the simplified method to calculate a home office deduction is within the reach of the VITA return preparer, as well as asking questions to determine if the space is exclusively and regularly used, and therefore, can be easily incorporated into the VITA program.

#### *Business Losses*

Claiming a loss on a Schedule C is currently out of scope for a VITA site. Certain business losses are disallowed by the TCJA of 2017 and the IRA of 2022, but only if they exceed an inflation-adjusted threshold which in 2024 is \$305,000 (S) or \$610,000 (MFJ) (Section 461(l)). Such large losses are unlikely for a VITA taxpayer. Yet many small businesses report losses in the first few years of operation.

#### *Vehicle Expenses*

Leased vehicles are currently out of scope for a VITA site. Some vehicles used by gig drivers are leased. Leasing expenses are treated as actual (not standard) expenses which are thus out of scope for VITA. Vehicle depreciation is currently out of scope for a VITA site. We recommend that SPEC follow Sections 167, 168 and 280F to allow the gig worker to recoup the investment in their vehicle. Use of actual vehicle expenses is currently not permitted at VITA sites; SPEC permits only standard, not actual expenses.

### **Recommendations**

1. Allow VITA sites to prepare tax returns for self-employed taxpayers who are eligible to use the simplified method to deduct home office expenses, with VITA volunteers trained on how to first determine if the taxpayer is eligible to claim a home office under Section 280A (for example, that the office is used regularly and exclusively as a home office).
2. Allow VITA sites to prepare tax returns for self-employed taxpayers with a business loss up to \$5,000. Train VITA volunteers on the Section 183 loss

- limits and ensure client intake questionnaires and interview questions cover the information needed for this determination (including history of prior losses for the activity) and whether an election under Section 183(e) applies.<sup>335</sup>
3. Allow VITA sites to prepare returns for self-employed taxpayers with vehicle leasing expenses.
  4. Allow VITA sites to prepare returns for self-employed taxpayers who claim vehicle depreciation (including bonus depreciation and regular depreciation deductions under the Modified Accelerated Cost Recovery System (MACRS)). Train VITA volunteers on the rules for vehicle depreciation and provide an easily accessible desk card to support the VITA volunteers.<sup>336</sup>
  5. Create a new safe harbor (modeled on the simplified home office expense deduction) allowing self-employed taxpayers to claim expenses using the business standard mileage rate in lieu of fixed and variable costs (under Treas. Reg. § 1.274-5(j)(2) and Notice 2024-07) for up to 10,000 miles driven during the year. Taxpayers would qualify for and calculate the safe harbor deduction using supporting documentation collected and maintained by ride-sharing or other gig platform companies that maintain records of miles driven.

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<sup>335</sup> Treas. Reg. § 1.183-2 lists the factors for determining activities not engaged in for profit and might be used to formulate a quick reference chart for volunteers; <https://www.ecfr.gov/current/title-26/chapter-I/subchapter-A/part-1/subject-group-ECFRcc67ec453a5e514/section-1.183-2>. FS-2022-38, October 2022 also provides a useful overview; <https://www.irs.gov/newsroom/know-the-difference-between-a-hobby-and-a-business>.

<sup>336</sup> We recommend providing a high-level overview of the content in Pub. 463, Chapter 4; <https://www.irs.gov/pub/irs-pdf/p463.pdf>.

## **ISSUE THREE: Alternatives to Wet Ink Signatures for Forms 2848 and 8821**

**SOP Mapping:** 1.2.

### **Executive Summary**

Electronic signatures have become commonplace in our modern world, and the public has become accustomed to signing important financial documents and contracts electronically through intuitive mobile user interfaces. The IRS has made improvements in its acceptance of electronically filed forms that authorize the release of taxpayer information to third parties, but the agency still requires “wet ink” signatures for forms submitted to the IRS (most commonly to the Practitioner Priority Service (PPS)) via fax,<sup>337</sup> forms mailed to the IRS, situations where the practitioner encounters technical difficulties using the Submit Forms 2848 and 8821 Online tool, and forms submitted by executors and administrators. Wet ink signature requirements create an unnecessary burden, causing delays in taxpayer services, and adding to the IRS burden of manually processing forms.

### **Background**

The adoption of digital signatures has expanded over the past 25 years. The Electronic Signatures in Global and National Commerce (E-SIGN) Act<sup>338</sup> became law on June 30, 2000. The statute prohibits a rule of law from denying the validity of transactions in interstate or foreign commerce on the basis that an electronic signature was used and became the legal foundation upon which modern American commerce is conducted.

In 2018, Congress built upon the E-SIGN Act when it passed the 21<sup>st</sup> Century Integrated Digital Experience Act (21<sup>st</sup> Century IDEA Act), which required, in part, that the head of executive branch agencies ensure that public-facing applications and services be made available to the public in a digital format. It further requires that agency heads ensure that any paper-based form used in serving the public is made available in a digital format that is mobile-friendly.

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<sup>337</sup> For security reasons, all forms mailed or faxed to the IRS must have a “wet” ink signature. See: <https://www.irs.gov/tax-professionals/submit-forms-2848-and-8821-online>.

<sup>338</sup> 15 U.S.C. § 7001.

Section 5 of the law provides a 180-day deadline for executive branch agencies to adopt plans accelerating the use of electronic signature standards as provided in the E-SIGN Act.<sup>339</sup>

On September 22, 2023, the Office of Management and Budget (OMB) issued Memorandum M-22-23, which provides guidance for federal agencies to implement the 21<sup>st</sup> Century IDEA Act.<sup>340</sup> Section 3 of that report requires, in part, that executive branch agencies accept electronic signatures and maintain a digital equivalent method of signing as an alternative to wet signatures.

The IRS has taken important steps to reduce the volume of paper submissions, which must be manually processed, by transitioning to electronic processes that are typically faster, more efficient, less labor intensive, and less costly. Notable among those changes is the establishment of individual online accounts, the ability for identity-verified representatives to upload some forms digitally, and phased deployment of a Document Upload Tool (DUT) that allows a secure upload of documents directly to an IRS employee or unit.

Form 8821, Tax Information Authorization, allows a taxpayer to authorize the release of specified information to a third party. Form 2848, Power of Attorney and Declaration of Representative, authorizes not only the release of specified information, but also grants the third party the authority to represent the taxpayer before the IRS concerning specified matters.

The IRS has taken key steps to adopt electronic signatures for Forms 2848 and 8821, citing the need to balance service to taxpayers against the need to protect sensitive taxpayer information. While the IRSAC appreciates the importance of protecting sensitive taxpayer information, the IRS's reluctance to accept electronic signatures for forms submitted through fax and mail creates enormous obstacles for many taxpayers, including taxpayers living abroad, executors of a decedent's estate, taxpayers served by Low-Income Taxpayer

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<sup>339</sup> 21st Century Integrated Digital Experience Act (P.L. 115-336 (Dec. 20, 2018)).

<sup>340</sup> OMB Memorandum M-22-23. <https://www.whitehouse.gov/wp-content/uploads/2023/09/M-23-22-Delivering-a-Digital-First-Public-Experience.pdf>.

Clinics (LITCs), those who do not have a computer or printer available to them, and taxpayers who need help with an urgent situation requiring quick action.

There are many taxpayers who prefer electronic documents, which offer ease of storage and avoid the cost of paper and ink, while also requiring less consumption of natural resources compared to paper. Because electronic documents and electronic signatures have become so prevalent, many people no longer own a printer. As of 2021, the U.S. Census Bureau found that 90% of U.S. households had at least one smartphone, while only 81% had a computer. Homes with only a smartphone(s) were more likely to have incomes of \$25,000 or less, be headed by someone age 65 or older, and to include a Black or Hispanic household member.<sup>341</sup> Many people cannot or do not print from their smartphones and therefore cannot easily produce a paper form to sign with wet ink. Many people using smartphones also struggle to accurately fill out a pdf file on their phones due to the small screen size and specific editing restrictions on the file type. As these households largely represent the target users of LITCs, they may again be impacted when they seek assistance through those avenues, as LITCs often see taxpayers only once per year, and it is burdensome on the volunteers at these sites to generate and collect wet signatures on these forms in order to assist the taxpayer with their issue.

Executors of decedent's estates face particular challenges in trying to address the decedent's tax matters. It is worth noting that a court-appointed executor has the legal obligation to settle all a decedent's affairs, including their tax obligations; indeed, they are typically the only person authorized to do so. Furthermore, the probate process places limits on the amount of time creditors have to file claims against the estate, making it important that the decedent's tax affairs be finalized before distributions are made to beneficiaries and the court closes probate. Effective tax administration suggests the IRS should be collaborating with the executor to make them aware of any outstanding issues and prepare the decedent's final tax return, as well as any other unfiled returns

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<sup>341</sup> ACS-56, Computer and Internet Use in the United States: 2021, June 2024; <https://www2.census.gov/library/publications/2024/demo/acs-56.pdf>.



reflected in the decedent's account. Nonetheless, executors face a lengthy and frustrating process to obtain the necessary information from the IRS to pay the decedent's final tax obligations so the probate process can be finalized.

An executor is often a relative who may live a great distance from the location where the decedent's estate is being probated. Their interaction with the accountant and/or attorney engaged to finalize the decedent's tax matters is often done remotely. Requiring wet signatures therefore involves the delay of mailing paper forms or the need to print forms, supply a wet signature, and mail them back. If electronic signatures could be utilized, the executor would have the option of signing on their smartphone, tablet, or other device, allowing the form to be submitted promptly.

The IRS does not grant the executor access to the decedent's online account, nor can the properly appointed representative with a valid Form 2848 or 8821 obtain the information online through IRS e-services. Instead, the executor's representative (typically an accountant or attorney) must call the practitioner line, fax in the completed forms and related documents, wait for the representative to evaluate them, and hope that the required information will be provided to the representative. This creates an unnecessary expenditure of time, money, and burden on IRS personnel.

While the executor's difficulties in obtaining information from the IRS about the decedent's tax matters are far from over when Form 2848 or 8821 is completed, allowing electronic signatures on these forms would at least be a small step in the right direction toward recognizing the executor's legal appointment as representative of the decedent's estate and working with them to resolve the decedent's tax matters.

Similarly, taxpayers living and working abroad face lengthy delays when relying upon international mail to grant authorization for release of information or representation. These taxpayers have been particularly burdened in the past by wet signature requirements. Until recently, they did not have the option of setting up an online account, as a U.S.-based cell phone provider was required for setup. While establishing an online account is now possible for these taxpayers, many

will still find it less burdensome to complete a Form 2848 or 8821 to appoint a designated person to receive their tax information and/or to represent them. Given international mail delays and varying reliability of mail in their countries of residence, taxpayers living abroad often wish to appoint a U.S.-based representative who can receive copies of any letters the IRS sends and respond on their behalf. Allowing an electronic signature on Forms 2848 and 8821 would make it much easier for these taxpayers to obtain representation in their tax matters while also making it more likely issues would be resolved in a timely manner.

Just as taxpayers living abroad may not become aware of an issue until a response is overdue, there are many taxpayers who require urgent assistance and need an easier way to grant authorization to their chosen representative. Taxpayers who were away from home for work or travel may return home to find a letter from the IRS with an overdue response. Taxpayers with significant tax debts often delay addressing these issues until a lien or levy notice arrives, at which point action is urgently needed. Still others may receive calls from fraudsters pretending to be IRS enforcement officers, demanding payment under threat of arrest or levy, and will ask their representative to call the IRS to confirm whether there is an issue. There are any number of reasons an urgent issue may arise, and providing taxpayers with the opportunity to sign electronically instead of finding a printer and a mailbox during times of crisis would be a sound practice.

While the IRSAC appreciates the importance of securing sensitive taxpayer data and curbing fraud, we also note that other federal agencies and large organizations with similar fraud and security concerns have already adopted electronic signatures for their authorization forms and other sensitive matters. The Social Security Administration (SSA), for example, has been allowing electronic signatures on their Forms SSA-1696 to appoint representatives since 2021.<sup>342</sup> The

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<sup>342</sup> Complete the Notice of Appointment (Form SSA-1696); <https://secure.ssa.gov/ssa1696/front-end/>.

Federal Deposit Insurance Corporation (FDIC),<sup>343</sup> National Credit Union Administration (NCUA),<sup>344</sup> Federal Reserve Board (FRB),<sup>345</sup> and Consumer Financial Protection Bureau (CFPB),<sup>346</sup> have all adopted E-SIGN standards that allow electronic signatures in financial agreements and other authorizations and contracts. Still, the IRS maintains wet signatures as the standard for Forms 8821 and 2848 submitted through mail and fax and by executors and administrators, even though the IRS itself has acknowledged that taxpayers, tax professionals, and IRS employees have appreciated the flexibility afforded by electronic signatures, which have made it easier for taxpayers and the IRS to interact with one another.<sup>347</sup>

The IRS does not currently grant a court-appointed executor access to the decedent's online account. This is true even when the executor has filed with the IRS Form 56, Notice Concerning Fiduciary Relationship, accompanied by a copy of the court order appointing them as fiduciary. As such, the executor is unable to electronically approve a Tax Pro authorization sent by their tax professional to the decedent's online account. This would be a genuine barrier to service for an executor that lacks a printer (or printer ink), or that is unwilling to have documents containing sensitive information printed and scanned at a public place, such as a local library or a copy store.

Electronic signatures do not necessarily pose more risks than wet signatures, and electronic signing has become commonplace for contracts and financial transactions ranging from real estate sales to small-dollar purchases of

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<sup>343</sup> X. Other — Electronic Signatures in Global and National Commerce Act ; <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/10/x-3-1.pdf>.

<sup>344</sup> Overview; <https://ncua.gov/regulation-supervision/manuals-guides/federal-consumer-financial-protection-guide/compliance-management/deposit-regulations/electronic-signatures-global-and-national-commerce-act-e-sign-act>.

<sup>345</sup> E-SIGN Act Requirements, Consumer Affairs Update - September 2014, September 15, 2014; <https://www.minneapolisfed.org/article/2014/esign-act-requirements>.

<sup>346</sup> 12 C.F.R. § 1024.3 E-Sign applicability; <https://www.consumerfinance.gov/rules-policy/regulations/1024/3/>.

<sup>347</sup> IR-2023-199 (Oct. 30, 2023), IRS extends popular flexibilities set to expire; electronic signatures and encrypted email enhance the taxpayer experience; <https://www.irs.gov/newsroom/irs-extends-popular-flexibilities-set-to-expire-electronic-signatures-and-encrypted-email-enhance-the-taxpayer-experience>.

online apps. Technology has evolved to the point where electronic signatures are not only accepted, but also expected. Properly deployed, electronic signatures can be more secure than their wet ink counterparts; handwritten signatures are not notarized, and the CAF unit does not have access to signature samples or handwriting analysis to confirm the wet signature was personally signed by the taxpayer, so relying on wet signatures is relying on documents with no authenticating information. Depending upon the technology utilized, an electronic signature can provide additional assurance by collecting additional authenticating information and affixing it to the submitted form.

### **Recommendations**

1. Allow taxpayers and representatives to submit electronically signed Forms 2848 and 8821 via fax and mail. Improve the Submit Forms 2848 and 8821 Online tool to allow submissions by taxpayers in an all-digital format accessible and easily completed and signed by those using mobile devices<sup>348</sup> as well as using personal computers. While paper versions of the form should remain available, electronic versions that are mobile-friendly and have the ability to be electronically signed<sup>349</sup> on the taxpayer's device would make these forms more readily available to the 90% of American households with smartphones.
2. Recognize that the IRS and the executor of a decedent's estate have a shared interest in ensuring the decedent's final affairs are tended to promptly and treat a Form 2848 or 8821 signed by the executor, paired with a copy of the court appointment, in the same manner it would treat these forms if signed by a living taxpayer acting on their own behalf. This involves granting the court-appointed executor access to the decedent's online account so they can check compliance, obtain required transcripts, and

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<sup>348</sup> Currently, the Submit Forms 2848 and 8821 Online tool only accepts files in .pdf, .jpeg, .jpg, .gif file formats, and this requirement increases the burden on mobile phone users to qualify for submitting forms with electronic signatures. See: <https://www.irs.gov/tax-professionals/submit-forms-2848-and-8821-online> .

<sup>349</sup> Sections 6061(b) and 6064; IRM 10.10.1.1.2 (10-17-2023).

resolve outstanding tax issues on behalf of the estate. This would also allow the executor to accept a representative's request for access sent through their Tax Pro account.

## **ISSUE FOUR: Expanding and Accelerating Transcript Access**

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**SOP Mapping:** Objective 1.

### **Executive Summary**

Each year, the IRS processes approximately 163 million 1040-series tax returns and over 3.5 billion informational returns, with the majority of these documents filed within the first four months of the year.<sup>350</sup> With 95.4% of individual tax returns e-filed and processed within two to three weeks of receipt, tax transcript data provided by the IRS is essential for verifying income when, applying for loans, reporting the annual wage and income reported into the IRS, and resolving tax return discrepancies.

Wage and income data transcripts are not available to recipients until June, after the April 15 filing deadline, the delay hinders timely and accurate tax preparation. By making wage and income transcripts available earlier and expanding summary information, the IRS could reduce extensions, amended returns, and Automated Underreporter (AUR) notices, while increasing efficiency and lowering costs for taxpayers and financial institutions.

To address these issues, the IRSAC recommends the IRS provide transcripts as soon as information is available, expand the data included on transcripts, provide additional summaries to make the transcripts more useful, and expand the forms supported as transcripts.

### **Background**

Each year, the IRS processes 163 million 1040-series tax returns, 95.4% of all individual tax returns are e-filed and processed by the IRS within two to three weeks of receipt, and 53% of these returns are prepared with the help of a tax professional. Tax season is incredibly busy for all involved, and the industry continually seeks ways to become more efficient, which is almost always mutually beneficial for taxpayers, tax professionals, and the IRS.<sup>351</sup>

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<sup>350</sup> *Internal Revenue Service Data Book 2023*, Pub 55b; <https://www.irs.gov/pub/irs-pdf/p55b.pdf>.

<sup>351</sup> IRS, *supra*.

Tax transcript data provided by the IRS is an essential resource for taxpayers, tax professionals, and financial institutions. Transcripts contain a summary record of a taxpayer's past tax filings and informational reports provided to the IRS, including detailed information on income, deductions, credits, and payments. Taxpayers and tax professionals often use this data to verify the accuracy of filed returns, apply for loans or mortgages, and resolve discrepancies with the IRS.

Tax professionals rely on transcripts for a variety of reasons, most commonly when accepting a new client as a historical review of the taxpayer's information and attributes, when helping a taxpayer respond to a notice from the IRS, when assisting an individual who has historically been non-compliant to catch up on past filings, and when assisting an estate to prepare required filings for a decedent. This data helps ensure that all relevant information is considered when preparing past and current tax returns. Additionally, financial institutions may request tax transcripts to verify a taxpayer's income and assess their financial stability.

There are three major categories of transcripts for individuals: tax return transcripts, wage and income transcripts, and account activity transcripts. Account activity transcripts reflect ongoing activity related to an individual's account and are out of scope for this issue.

#### *Wage & Income Transcript*

The most common transcripts include Form W-2, 1099-series, 1098-series, and Schedules K-1. Information reporting significantly enhances the accuracy of income reporting, and studies indicate that third-party information reporting reduces the tax gap by ensuring that income data is reported more accurately. When information is reported by employers, financial institutions, and other third parties, the IRS can cross-check this data against taxpayer submissions, leading to higher compliance and fewer errors. The IRS's increased use of information returns has proven effective in encouraging accurate and timely reporting, thereby reducing underreporting and tax evasion.<sup>352</sup> Despite its importance, the wage and

income data transcript is unavailable to the recipient from the IRS until June of the following calendar year, despite being available internally at a much earlier date. Almost all of the basic income and deduction informational returns are required to be received by the IRS by February 28th following the calendar year-end.

The IRS AUR Program process matches individual tax returns against Forms 1099 and other information returns filed by third parties. The IRS posts individual tax returns it receives every year to an Individual Master File (IMF), comparing them with the Information Return Master File (IRMF). In 2023, the IRS received approximately 5.4 billion information returns and posts the information on the IRMF. The AUR Program is its largest compliance program.<sup>353</sup>

These internal processes result in millions of AUR cases each year that are initiated by issuing two types of notices: CP2501,<sup>354</sup> a request for additional information, and CP2000,<sup>355</sup> a proposed adjustment to a filed return. In both cases, if an error was made by the taxpayer, often an amended tax return will be filed. There are approximately three million amended tax returns filed for Forms 1040; however, they are not required in response to an AUR notice but are processed during the course of the resolution.

Gathering tax documents has become more complex as many institutions and individuals attempt to go “paperless” but find emails more numerous and difficult to trust. It’s a common issue among tax filers to find themselves hunting down missing documents or forgetting about them altogether. If the wage and income transcripts were available during tax season, tax filers and tax professionals could leverage this information to ensure all information reported is accurately reflected on the tax return, reducing the number of AUR cases and amended returns significantly.

Similarly, the information included on Form W-2 and Form 1099-R should be expanded to provide a greater benefit to the recipient by including state income

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<sup>352</sup> Pub. 5364, Tax Gap Estimates TY2014-2016, p. 3; <https://www.irs.gov/pub/irs-pdf/p5364.pdf>.

<sup>353</sup> Pub. 55b, *supra*, p. 56; <https://www.irs.gov/pub/irs-pdf/p55b.pdf>.

<sup>354</sup> Understanding your CP2501 notice; <https://www.irs.gov/individuals/understanding-your-cp2501-notice>.

<sup>355</sup> Understanding your CP2000 notice; <https://www.irs.gov/individuals/understanding-your-cp2000-notice>.



and withholding information that is reported to the IRS and required to accurately prepare an income tax return. Form 1099 information received from financial institutions should be summarized in the wage and income transcript to mimic the consolidated information on brokerage statements to aggregate short-term and long-term gains and losses into covered and non-covered lots by account. This would greatly enhance the usability of the investment transaction transcript because in the current state the 1099-B information is only available at the transaction level, often meaning the file is too large to render without failing and is too voluminous to be useful.

### *Tax Return Transcript*

Tax filers are often required to provide tax returns and/or tax transcripts as application supporting documentation for many common transactions, including loan applications, financial aid, immigration applications, verification of income for employment purposes, and court proceedings. Because many banks and lending institutions are looking for specific information from tax returns that are not available on transcripts, they often need to obtain both the transcript and the tax return, which drives up the costs associated with analyzing the information that is ultimately passed along to the consumer. Tax transcript data is generally made available about two weeks after a return is electronically filed. While this timeline is a more reasonable turnaround, there is some additional information that, if included, could benefit taxpayers and the institutions interacting with them.

Organizations such as the Federal Housing Finance Agency (FHFA) play a crucial role in ensuring the stability and affordability of mortgages. The FHFA mandate includes overseeing government-sponsored enterprises that provide liquidity and stability to the mortgage market. By purchasing mortgages from lenders and packaging them into securities, the government-sponsored entities expand the pool of funds available for housing, which helps lower borrowing costs and ensures a continuous supply of mortgage money. This process makes the secondary mortgage market more liquid and reduces interest rates for homeowners and other mortgage borrowers.

The income calculations used when assessing whether a loan will be purchased by these entities include many fields directly pulled from a tax transcript but also fields that are not currently available directly from the IRS. By including these fields on the transcript, the cost of a loan could be further reduced, which benefits lower-income borrowers at a greater rate than those in higher tax brackets. There are 27 fields specifically missing from tax transcripts that are required for the income calculation from Form 1084<sup>356</sup> and Form 91.<sup>357</sup>

Additionally, some forms remain unavailable, which limits issue resolution along with transparency related to tax filings. In June 2020, the IRS began supporting e-filing for Form 1040-X Amended U.S. Individual Income Tax Return which greatly increased efficiencies at the IRS because the approximately three million amendments no longer needed to be manually processed. With supporting this process improvement, it seems natural that a tax transcript of the amended return would also be provided but this is not supported and therefore it is extremely difficult to research what was amended on a historical basis. Another common form that should be available as a transcript but is not Form 1041, U.S. Income Tax Return for Estates and Trusts.

By delaying access to the information and limiting the breadth of information, timely and accurate tax preparation for both taxpayers and the professionals helping them is hindered. The following benefits could be recognized by making slight modifications to provide access to information earlier and expanding the summary information currently available: increased availability of accurate returns filed by April 15 resulting in a reduction of extensions, amended returns, and AUR notices issued; increased efficiency and reduced manual input errors by allowing tax software to utilize IRS wage and income data; and lower costs of securing financing from various financial institutions for student loans, business loans, and mortgages.

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<sup>356</sup> Form 1084, Cash Flow Analysis; <https://singlefamily.fanniemae.com/media/7746/display>.

<sup>357</sup> Form 91, Income Calculations; <https://sf.freddiemac.com/docs/pdf/forms/91.pdf>.

## **Recommendations**

1. *Provide Wage and Income Transcripts as Soon as They Are Available to the IRS:* Make wage and income transcripts available to taxpayers during the tax season, rather than in June of the following year. This would help taxpayers and tax professionals ensure all reported information is accurately reflected on tax returns, thereby reducing the number of AUR cases and amended returns.
2. *Expand Information Included on Transcripts:* Include additional fields on Forms W-2 and 1099-R, to include details regarding state and local income and withholding information, to provide a more comprehensive summary that can be directly used to prepare accurate tax returns.
3. *Enhance Form 1099-B Transcript Export Functionality:* These transcripts are often lengthy and sometimes unavailable to export due to the large file size.
4. *Improve Financial Documentation for Loans:* Enhance the tax transcripts to include additional fields required for income calculations used by entities with Federal Housing Finance Agency (FHFA) oversight.<sup>358</sup> This would help lower-income borrowers by reducing the cost of securing loans and making the loan approval process more efficient.
5. *Ensure Availability of Key Transcript Types:* Make important forms like Form 1041 and Form 1040X available in tax transcripts to facilitate issue resolution and increase transparency.

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<sup>358</sup> Form 91, Income Calculations; <https://guide.freddie.mac.com/app/guide/form/91>. Form 92, Net Rental Income Calculations – Schedule E; <https://guide.freddie.mac.com/app/guide/form/92>.

## **APPENDIX A: IRSAC Comment Letters Submitted to the IRS in 2024**

In 2024, the IRSAC submitted seven comment letters to the IRS. These letters are reproduced in this appendix. The first letter was submitted in May 2024 to follow the process established by the Department of the Treasury and the IRS via the Priority Guidance Plan (PGP) to solicit suggestions from the public for the guidance plan for the upcoming year. Our PGP letter identified open recommendations from the 2023, 2022 and 2021 IRSAC reports that call for binding guidance. The IRSAC plans to submit a letter for the PGP process each year to present recommendations that remain open and call for binding guidance.

Other comment letters respond to IRS requests for public comments on draft forms and technical notices for which the IRSAC had a high level of interest and expertise. The recommendations in these comment letters were due to the IRS before the November report and were submitted as letters per the IRS official requests for public comments on draft forms and notices.

1. May 30, 2024: Recommendations for the 2024-2025 Priority Guidance Plan Per Request in Notice 2024-28
2. June 21, 2024: Comments on Draft Form 1099-DA, Digital Asset Proceeds From Broker Transactions
3. August 22, 2024: Comments on Draft 2024 Schedule 1 (Form 1040), Additional Income and Adjustments to Income
4. September 4, 2024: Comments on Notice 2023-56, Federal Income Tax Consequences of Certain State Payments
5. September 6, 2024: Recommendations for Future Form W-4, Employee's Withholding Certificate
6. October 10, 2024: Comments on Notice 2024-55, Certain Exceptions to the 10 Percent Additional Tax Under Code Section 72(t)
7. October 11, 2024: Comments on Draft Filer Instructions for Form 1099-DA, Digital Asset Proceeds from Broker Transactions

# 1. Recommendations for the 2024-2025 Priority Guidance Plan Per Request in Notice 2024-28

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## Internal Revenue Service Advisory Council (IRSAC) 1111 Constitution Avenue NW, Washington, DC 20224

Annette Nellen, Chair May 30, 2024

### Information

#### Reporting Subgroup:

Wendy Walker, Chair  
Beatriz Castaneda  
Susan Nakano  
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Peter Smith  
Sean Wang  
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Attn: CC:PA:01:PR (Notice 2024-28) Room 5203

P.O. Box 7604

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Washington, D.C. 20044

Submitted to [www.regulations.gov](http://www.regulations.gov) (IRS-2024-0009)

### Large Business & International Subgroup:

Katrina Welch, Chair  
Andrew Bloom  
Anthony Massoud  
Dawn Rhea  
Thomas Wheadon

Re: Recommendations for the 2024-2025 Priority Guidance Plan Per Request in Notice 2024-28

To Whom It May Concern:

The Internal Revenue Service Advisory Council (IRSAC) is pleased to provide recommendations for the 2024-2025 Priority Guidance Plan as requested by [Notice 2024-28](#). These recommendations tie to our work going back to 2021.

### Small Business/Self-Employed Subgroup:

Jeff Porter, Chair  
Amanda Aguillard  
Christine Freeland  
Aidan Hunt  
Annette Nellen  
Lawrence Sannicandro

The IRSAC serves as an advisory body to the Commissioner of the Internal Revenue Service (IRS) and agency leadership. This group consists of 32 volunteer members appointed by the IRS and represents a broad cross-section of interests and areas of expertise in various aspects of tax compliance and administration. The IRSAC provides an organized forum for discussion of tax administration issues between IRS officials and representatives of the public. The IRSAC reviews existing tax policy and administrative issues and makes recommendations in an annual written report to achieve efficient and effective tax administration.

### Tax Exempt/Government Entities Subgroup:

Brian Yacker, Chair  
Joseph Bender  
Sam Cohen  
Steven Grieb  
Jodi Kessler  
Tara Sciscoe  
Cory Steinmetz

The IRSAC members work within five broad subject matter groups. These subgroups are Information Reporting, Large Business & International, Small Business/Self-Employed, Tax-Exempt/Government Entities, and Taxpayer Services (formerly named Wage & Investment).

### Taxpayer Services Subgroup:

Alison Flores, Chair  
Robert Barr  
Elizabeth Boonin  
Mason Klinck  
Brayan Rosa-Rodriguez  
Hussein Tarraf  
Lucinda Weigel

The majority of the recommendations below were included in the 2021, 2022 and 2023 annual reports that the IRSAC provided to the IRS. Two recommendations (state payments and Form 1099-DA) relate to topics for which more detailed comments will be included in our 2024 report. Thus, most of these recommendations were

previously made to the IRS but are submitted here formally for the PGP to ensure they are also part of the formal process established by the Department of the Treasury and the IRS to identify topics for possible guidance.

The annual reports of the IRSAC also include non-guidance recommendations such as for tax forms, technology, and IRS practices and procedures. Links to the annual reports are included in the description of each of our recommendations as these reports include further details to support the recommendations. The report links are:

- 2023 - <https://www.irs.gov/pub/irs-pdf/p5316.pdf>
- 2022 - <https://www.irs.gov/pub/irs-prior/p5316--2022.pdf>
- 2021 - <https://www.irs.gov/pub/irs-prior/p5316--2021.pdf>

We appreciate your consideration of these comments and IRSAC members are available to discuss any of them further. You can reach us via the IRS Office of National Public Liaison at [publicliaison@irs.gov](mailto:publicliaison@irs.gov).

## **General**

### **A. Circular 230 Revision**

Recommendation from the [2021 IRSAC Report](#), pages 40 to 42:

Update Circular 230 for currency, relevancy, and readability.

### **B. State Payments Taxability and Information Reporting**

The IRSAC is developing specific suggestions on this topic for its 2024 report. We recommend that guidance be issued to address comments received and to be received on Notice 2023-56. Guidance is needed to enable taxpayers, tax practitioners, state tax agencies and state lawmakers to have confidence in understanding the federal tax treatment of various types of payments made by state and local governments to taxpayers as well as the details concerning any required information reporting.

## Information Reporting

### A. Section 6050W Guidance Needed for Filers of Form 1099-K

Recommendations 1 to 6 from the [2023 IRSAC Report](#), pages 25 to 31:

1. Clarify the definition of ‘account’ for purposes of section 6050W(d)(3)(A) and Treas. Reg. §1.6050W-1(a)(2).
2. Clarify the discrepancy between section 6050W(d)(3)(A) and Treas. Reg. §1.6050W-1(c)(3) with respect to the use of the term ‘providers’ versus ‘persons’.
3. Define the term ‘substantial’ by providing a baseline number for purposes of Treas. Reg. §1.6050W-1(c)(3).
4. Define the meaning of ‘guarantee’ for purposes of section 6050W(d)(3)(c).
5. Add examples in the Treasury regulations to include scenarios of an arrangement that constitutes a guarantee for purposes of section 6050W.
6. Update the Treasury regulations with practical examples illustrating who is required to report when there are multiple PSEs obligated to report the same transaction.

### B. Section 302 Escrow and Certification Procedure

Recommendations 1 to 8 from the [2023 IRSAC Report](#), pages 38 to 41:

1. The IRS should provide that withholding agents can *presume* that a public markets Section 302 transaction is an exchange (not subject to withholding tax) for U.S. tax purposes, unless the withholding agent has actual knowledge otherwise.
2. If such a presumption is not provided, the IRS should address practical, operational, and interpretational issues with the 2007 Proposed Regulations.
3. Withholding should not be required on presumed foreign persons (that have not provided a Form W-

- 8) that have provided a Section 302 certification certifying exchange treatment.
4. Reporting on Form 1042-S [Foreign Person's U.S. Source Income Subject to Withholding] should not be required if the non-US person provides a Section 302 certification certifying exchange treatment.
  5. Qualified intermediaries should be permitted to act as withholding agents with respect to Section 302 transactions.
  6. Guidance should be provided regarding whether a withholding agent may obtain a Section 302 certification from a non-withholding foreign partnership with respect to the non-withholding foreign partnership's holdings, or whether it is required to obtain individual certifications from the partners of the foreign partnership.
  7. It should be made explicitly clear that a Section 302 certification signature under penalties of perjury may be provided electronically.
  8. The IRS should consider developing a standard form or IRS approved certification and instructions document.

Guidance should be provided to withholding agents with respect to distributions paid in connection with stock that is not traded on an established financial market.

### **C. Guidance to Allow Issuers of Form 1099-DA to Furnish Forms Electronically**

The IRSAC started working on this digital asset topic in 2024 and also plans to issue comments on the draft Form 1099-DA, Digital Asset Proceeds From Broker Transactions. We recommend that final regulations under Section 6045 allow brokers who facilitate trades of digital assets through a smartphone, tablet, computer, or similar technology be allowed to furnish written statements to a recipient electronically without requiring the recipient to first consent to receive the statement electronically.



#### **D. Payors of Income Related to Digital Assets Need Information Reporting & Withholding Guidance**

Recommendations 1 to 3 from the [2021 IRSAC Report](#), pages 48 to 56 (slightly modified in light of the issuance of proposed regulations in August 2023 ([REG-122793-19](#))):

1. The new reporting requirements should include sufficient time for the industry to prepare for and implement the proposed changes, and should contemplate fundamental information reporting issues, including who is a broker, what digital assets are in scope for reporting, and how to account for details related to the transactions for purposes of basis reporting.
2. Develop a strategic plan for analyzing and providing the industry with applicable withholding and information reporting guidance for other digital asset related transactions including income from staking, lending activities and NFT marketplaces.
3. Update existing publications and Form 1099 Instructions with examples of digital asset transactions subject to the requirements. Leverage traditional communications like Internal Revenue Bulletins to articulate guidance for more specific application of details.

#### **E. Negative Rates**

Recommendations 1 and 2 from the [2021 IRSAC Report](#), pages 72 to 75:

1. Publish guidance with respect to the source of a negative rate payment. Such guidance should be broad enough to cover payments on routine financial transactions such as deposits, collateral on derivatives, margin loans and repos.
2. If there are scenarios in which published guidance treats a negative rate payment as U.S. source fixed or determinable annual or periodical (FDAP) income, (i) such guidance should be effective only after an adequate transition period for withholding agents to modify systems to account for such guidance, and (ii) the IRS should not challenge taxpayers who have taken a reasonable position with respect to the tax characterization and source of a

negative rate payment prior to the effective date of such guidance.

## **Large Business & International**

### **A. Accelerate Issuance of Section 174 Guidance** Recommendations 1 to 3 from the [2023 IRSAC Report](#), pages 49 to 52:

1. Prioritize Section 174 guidance, in the form of binding guidance such as a relevant Notice, Revenue Ruling or Treasury Department issued regulation. In the interim, publicly available Questions & Answers (FAQs, ideally issued as a news release (IR)) would also provide clarity for taxpayers.
2. Include the following topics in the binding guidance:
  - a. Does Section 174 amortization apply to funded research and development in the context of software and non-software if (i) the taxpayer does not own or have rights to the intellectual property or (ii) if the taxpayer does not own the intellectual property but does have rights to the intellectual property?
  - b. Do general and administrative, and operations costs have to be allocated to the capitalized and amortized R&E costs? If so, what allocation methodology should be utilized or what is a reasonable allocation approach? Are these approaches considered methods of accounting?
  - c. What documentation and/ or workpapers are taxpayers required to keep as part of Section 174 cost identification and analysis process?
  - d. In IRS issued guidance provide examples on “in carrying on” versus “in connection with” as used in Sections 162 and 174 such that taxpayers may appropriately utilize other IRC Sections when considering R&E in the ordinary course of carrying on their trade or business.

3. Consider the following Safe Harbors in guidance under the TCJA change to Section 174:
  - a. Exclude funded research and funded software development from IRC Section 174 amortization.
  - b. Include that taxpayers will not be subject to underpayment penalties on quarterly estimated payments if the add back is equal to prior year Qualified Research Expenses (QREs) (or 125%).
  - c. Provide a safe harbor if estimated payments are based on the same as Accounting Standard Codification (ASC) 730 book research and development amounts.

**B. Procedures For Partners that Receive Late Schedule K-1 Filings**

Recommendation from the [2022 IRSAC Report](#), pages 52 to 55:

To eliminate the administrative burden to the IRS from processing amended returns and to large corporate taxpayers arising from receiving late Schedules K-1, a procedure should be adopted by which large corporate taxpayers are permitted to:

- i. Use good faith estimates with respect to late received Schedules K-1 to timely file their Form 1120.
- ii. Correct any such estimated amounts (to the extent necessary) on the subsequent tax year's Form 1120 (including the payment of any interest attributable to an increase in tax for the original reporting year resulting from such true-up and consent to extend the statute of limitations solely with respect to these corrected amounts).
- iii. Include an attestation signed under penalty of perjury that the estimated amounts are good faith estimates to the best knowledge of the corporate taxpayer and the Schedules K-1 were not

received on or prior to September 15 and similar timing for fiscal year large corporate taxpayers.

## **Tax-Exempt / Government Entities**

### **A. Self-Correction Guidance for Employee Plans**

Recommendations 1 to 10 from the [2023 IRSAC Report](#), pages 115 to 121:

1. Expand the Employee Plans Compliance Resolution System (EPCRS) (currently set out in Rev. Proc. 2021-30) to permit direct transfers between different types of plans maintained by the same employer when contributions have erroneously been made to one plan when they should have been made to another plan.
2. Expand EPCRS to allow plan sponsors to use the Department of Labor lost earnings calculator as a reasonable alternative method for calculating lost earnings when correcting failures.
3. Expand EPCRS to allow a retroactive amendment to correct an ADP/ACP testing error by changing testing methods if the amendment would have been permitted under the Internal Revenue Code if timely adopted and it does not favor HCEs over non-HCEs.
4. Expand EPCRS to allow plan sponsors to self-correct failures to timely amend the plan for tax law changes.
5. Expand EPCRS to provide guidance on how to correct failures regarding both underpayments and excess mandatory employee contributions with respect to governmental plans.
6. Expand EPCRS to address corrections of missed RMDs due to vendor failures when a deselected vendor fails or refuses to make RMDs, and the plan sponsor has no control over the assets.
7. Update EPCRS to address statutory changes in Section 301 of the SECURE 2.0 Act with respect to correcting overpayment errors.
8. Reorganize the EPCRS to group together all correction methods related to a single type of failure to facilitate compliance.

9. Review the types of errors being filed under the VCP [Voluntary Correction Program] to determine additional guidance that may be needed under the EPCRS for plan sponsors to adequately self-correct for the same errors.
10. Continue to request comments from plan sponsors on the EPCRS updates to gather information on how employers are using the self-correction program (SCP).

**B. Increase the Tax Reporting Threshold for Slot Machine Jackpot Winnings**

Recommendations 1 and 2 from the [2023 IRSAC Report](#), pages 135 to 138:

1. Increase the tax reporting threshold for slot machine jackpot winnings to \$5,000 (modification to Treas. Reg. 1.6041-10).
2. For calendar years beginning after the first year of a \$5,000 threshold, consider periodic increases to increase the threshold to a dollar amount multiplied by the cost-of-living adjustment.

Respectfully submitted,



Annette Nellen  
2024 IRSAC Chair

## 2. Comments on Draft Form 1099-DA, Digital Asset Proceeds From Broker Transactions

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### Internal Revenue Service Advisory Council (IRSAC) 1111 Constitution Avenue NW, Washington, DC 20224

Annette Nellen, Chair

June 21, 2024

**Information Reporting Subgroup:**

Wendy Walker, Chair  
Beatriz Castaneda  
Susan Nakano  
Jon Schausten  
Peter Smith  
Sean Wang  
Nicholas Yannaci

Andres Garcia  
Internal Revenue Service  
Room 6526  
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Submitted via email to: [pra.comments@irs.gov](mailto:pra.comments@irs.gov)

Also submitted to IRS.gov/FormsComments Re: NTF1099-DA

**Large Business & International Subgroup:**

Katrina Welch, Chair  
Andrew Bloom  
Anthony Massoud  
Dawn Rhea  
Thomas Wheadon

Re: **Comments on Draft Form 1099-DA, Digital Asset Proceeds From Broker Transactions**

Dear Mr. Garcia,

**Small Business/Self-Employed Subgroup:**

Jeff Porter, Chair  
Amanda Aguillard  
Christine Freeland  
Aidan Hunt  
Annette Nellen  
Lawrence Sannicandro

The Internal Revenue Service Advisory Council (IRSAC) is pleased to provide comments in response to the *Proposed Collection; Comment Request for Digital Asset Proceeds From Broker Transactions*<sup>1</sup> posted in the Federal Register on April 22, 2024, with respect to the draft version of *2025 Form 1099-DA Digital Asset Proceeds from Broker Transactions*.<sup>2</sup>

**Tax Exempt / Government Entities Subgroup:**

Brian Yacker, Chair  
Joseph Bender  
Sam Cohen  
Steven Grieb  
Jodi Kessler  
Tara Sciscoe  
Cory Steinmetz

The IRSAC serves as an advisory body to the Commissioner of the Internal Revenue Service (IRS) and agency leadership. This group consists of 32 volunteer members appointed by the IRS and represents a broad cross-section of interests and areas of expertise in various aspects of tax compliance and administration. The IRSAC provides an organized forum for discussion of tax administration issues between IRS officials and representatives of the public. The IRSAC reviews existing tax policy and administrative issues and makes recommendations in an annual written report to achieve efficient and effective tax administration.

**Taxpayer Services Subgroup:**

Alison Flores, Chair  
Robert Barr  
Elizabeth Boonin  
Mason Klinck  
Brayan Rosa-Rodriguez  
Hussein Tarraf  
Lucinda Weigel

The IRSAC members work within five broad subject matter groups. These subgroups are Information Reporting, Large Business & International, Small Business/Self-Employed, Tax-Exempt / Government Entities, and Taxpayer Services (formerly named Wage & Investment).

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<sup>1</sup> 89 FR 29433 (Apr. 22, 2024), Proposed Collection; Comment Request for Digital Asset Proceeds from Broker Transactions; <https://www.federalregister.gov/documents/2024/04/22/2024-08528/proposed-collection-comment-request-for-digital-asset-proceeds-from-broker-transactions>.

<sup>2</sup> 2025 Draft Form 1099-DA (Apr. 18, 2024); <https://www.irs.gov/pub/irs-dft/f1099da--dft.pdf>.

Our comments on the draft Form 1099-DA address the following matters:

- Form instructions are needed to provide relevant and comprehensive feedback.
- Boxes related to wash sales and disallowed loss should be removed from Form 1099-DA.
- Form 1099-DA should follow the existing statutory requirements relating to missing tax identification numbers (TINs).
- Filers should be able to mask digital asset addresses and TINs on recipient copies of Form 1099-DA.
- Form 1099-DA should be redesigned, balancing the information taxpayers need to complete tax return information with the information the IRS needs for enforcing compliance.
- Include Form 1099-DA in the Combined Federal State Filing (CF/SF) program.
- Transactions should be reported in the broker's operating time zone, rather than in Coordinated Universal Time (UTC).

Details of our comments follow.

**Form instructions are needed to provide relevant and comprehensive feedback.**

There are over 31 different information returns, each with multiple boxes that require specific information in order for taxpayers and the IRS to properly consume the details and ultimately to ensure proper tax compliance. The IRS publishes unique and detailed instructions for each information return for both the Recipient and the Filer of the form.

However, the draft version of Form 1099-DA did not include the accompanying Filer instructions for the form. Without detailed instructions, filers will make assumptions about what certain box titles mean or what information is required, and ultimately the industry comments received by the IRS may not be relevant.

There are a variety of data points required to be included on the draft Form 1099-DA that were not contemplated in the proposed regulations<sup>3</sup> including the requirement to include an explanation of a missing recipient TIN, to indicate a Broker Type, to provide a reason why a lot is Covered or Uncovered, and to report a Code for digital assets. Without detailed form instructions, it is difficult to ascertain whether these data points are necessary for the proper performance or functions of the IRS. Further, it should be noted that implementing programming changes to capture and report these and other data elements could not begin until the industry has detailed technical specifications. As such, the industry would need at least 18 months from the date of the final regulations, in order to implement the various transactional level details prescribed on this draft form (and in the proposed regulations).

To ensure the industry and the IRS are afforded the opportunity to evaluate and comment on the holistic impacts of the new form and processes, the IRSAC recommends that the IRS release a draft version of the Form 1099-DA Filer Instructions along with another draft version

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<sup>3</sup> Proposed Regulations: Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, Aug. 29, 2023; <https://www.federalregister.gov/documents/2023/08/29/2023-17565/gross-proceeds-and-basis-reporting-by-brokers-and-determination-of-amount-realized-and-basis-for>.

of the Form 1099-DA, and request industry comments. In addition, to the extent other forms or instructions will be updated in conjunction with the new Form 1099-DA, IRSAC requests that those forms and instructions be provided in draft form contemporaneously so that industry can review all the changes together.

**Boxes related to Wash Sales and Disallowed Loss should be removed from Form 1099-DA.**

The proposed regulations issued on August 29, 2023, contained a coordination rule at Prop. Treas. Reg. § 1.6045-1(c)(8)(i) applicable to transactions involving the sale of a digital asset that also constitutes a sale of a security as so defined (other than options that constitute contracts covered by Section 1256(b)). Under this proposed coordination rule, brokers must report the sale of an asset that qualifies both as such a security and as a digital asset only as a sale of a digital asset and not as a sale of a security.

If an asset must be reported as a digital asset and not as a sale of a security, then only reporting rules applicable to digital assets should apply to assets reported on Form 1099-DA. Treas. Reg. § 1.1091-1 only applies to losses from wash sales of stock or securities. It does not apply to digital assets. Wash sale reporting rules would not apply to any assets reported under the coordination rule until such time Congress passes wash sale legislation for digital assets. If the IRS wants brokers to report disallowed losses on tokenized securities, it should revoke the coordination rule and require reporting for the sale of these assets on Form 1099-B.

**Form 1099-DA should follow the existing statutory requirements relating to missing tax identification numbers (TINs).**

The draft version of Form 1099-DA contains a box for the filer to populate with reason(s) when the form is reporting a missing TIN for the recipient. However, the existing statute and Treasury regulations provide for different requirements when a payee fails to provide their TIN in the manner required for the payment.

Specifically, Section 6109(a)(1) requires any person required to make a return, statement, or other document to include in the document such identifying number as may be prescribed for securing proper identification of the person.<sup>4</sup> Section 3406(a)(1)(A) requires a person to deduct and withhold 24% from the gross payment when the payee fails to furnish their TIN in the manner required for the payment.<sup>5</sup> Separately, when a filer submits an information return with a missing TIN, the filer is subject to a penalty according to Section 6721,<sup>6</sup> and must follow the reasonable cause requirements outlined in Section 6724<sup>7</sup> to qualify for a waiver of the penalty. To comply with Sections 6109 and 3406, filers have implemented policies and procedures to collect TINs from payees in the manner required for the payment and to backup withhold when a TIN is not provided.

In addition to being outside of the existing process required by statute, the proposed process to collect a written reason for a missing TIN from a payee is inefficient and ineffective. Among

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<sup>4</sup> Section 6109, Identifying Numbers.

<sup>5</sup> Section 3406, Backup withholding.

<sup>6</sup> Section 6721, Failure to file correct information returns.

<sup>7</sup> Section 6724, Waiver, definitions and special rules.



reasons that will be true, the broad scope of the Proposed Regulations will produce Form 1099-DA reporting for non-U.S. payees, most of whom will not have a U.S. TIN.

The IRSAC recommends that rather than introducing a ‘one-off’ process for this new information return, that the IRS follow the existing statutory and procedural requirements that require brokers to backup withhold when a recipient does not provide their TIN in the manner required.

### **Filers should be able to mask digital asset addresses and TINs on recipient copies of Form 1099-DA**

Private information is required to be reported on Form 1099-DA including TINs, and Lines 11b and 12b reference the *Digital Asset address* which presumably is the wallet address that sent or received the reportable transaction.

TINs are routinely masked on the recipient copy of other information returns to help protect the data privacy when the statement is sent to the recipient in the mail or electronically. The IRSAC recommends that the IRS include the ability for filers to mask TINs on Form 1099-DA in order to help protect this private information.

In response to the August 29, 2023 proposed regulations, many commenters expressed detailed concerns explaining why the wallet address information should not be included on the form. However, if the IRS intends to require this information to be reported, the IRSAC recommends that the instructions ensure that filers can mask the wallet information appearing on the recipient copy of the form.

### **Form 1099-DA should be redesigned, balancing the information taxpayers need to complete tax return information with the information the IRS needs for enforcing compliance.**

Information returns are used by both taxpayers and the IRS to ensure income tax compliance. The taxpayer uses the details provided on information returns to complete the various IRS forms and schedules and the IRS uses the information to ensure compliance in reporting income and deductions in the income tax process. Section 6001 provides that information reporting should contain information that “the Secretary deems sufficient to show whether or not such person is liable for tax under this title.”<sup>8</sup> Some fields shown on the draft Form 1099-DA do not support that statutory mission but appear to be requested for aggregated data analysis. Many fields on the form do not support determining tax liability of the taxpayer while adding burden to the payer to gather, manage and report that content.

The layout of the draft Form 1099-DA is difficult to read. There is too much blank space in the upper left section of the form and the design makes it so the taxpayer has to start reading from the upper right which is not intuitive.

There are myriad data points required to be reported on the form that the taxpayer may not understand, nor would they need for preparing their income taxes. For example, the taxpayer does not need to know what type of broker was involved in the transaction or if the transfer of

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<sup>8</sup> Section 6001, Notice or regulations requiring records, statements, and special returns.

the assets was recorded on a distributed ledger for the purpose of accurately preparing their income tax return information.

The box labels for *1c Number of Units*, *11c Number of Units*, and *12c Number of units transferred* appear to be duplicates of one another. The wording should be less clunky and more precise and consistent.

To avoid taxpayer confusion and related taxpayer service issues, the IRSAC recommends that the IRS redesign the Form 1099-DA, balancing the information taxpayers need to properly complete their income tax return information along with the information the IRS needs for enforcing compliance.

Separately, because a filer must issue multiple Forms 1099-DA for every transaction, a recipient could possibly receive hundreds, thousands or even hundreds of thousands of Forms 1099-DA. Recipients will receive separate Forms 1099-DA for each transaction that is made up of the following lots:

- covered lots with short term gains/losses
- covered lots with long term gains/losses
- uncovered lots with long term gains/losses purchased prior to 2023
- uncovered lots with short term gains/losses that were transferred in (a separate form will be required for each transfer from a separate digital asset wallet)
- uncovered lots with long term gains/losses that were transferred in (a separate form will be required for each transfer from a separate digital asset wallet)

The current design of the draft Form 1099-DA will make it incredibly difficult for a taxpayer receiving such voluminous amounts of tax information to transfer that information to their income tax return. To aid taxpayers, the IRSAC recommends that the IRS:

- 1) Consider aggregated reporting of digital asset transactions, where practical. Providing the taxpayer with digestible tax information should be a priority to encourage compliance. For example, if all of a taxpayers' transactions are short-term, traded in the same asset, and are all Covered, the filer should be able to aggregate and issue one Form 1099-DA for proceeds. Consolidated reporting is a common practice among other information return reporting including Form 1099-R for example where consolidated reporting is permitted in some cases, and distinct only when needed.
- 2) Expand the option for filers to issue a substitute version of Form 1099-DA to recipients. Specifically, the details described in Part 4 of the Publication 1179 General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns should be expanded to include Form 1099-DA.

### **Include Form 1099-DA in the Combined Federal State Filing (CF/SF) Program**

Filers of information returns rely on the CF/SF program to satisfy some of their state information reporting obligations. Filers include state tax income and withholding amounts in

the Publication 1220 formatted data submitted to the IRS annually, and the IRS shares that information with the participating states in the program.<sup>9</sup>

To ensure that participating states can receive the Form 1099-DA information to enforce state income tax compliance, and also to minimize the burden on the industry of having to file the forms directly with each state, the IRS should add Form 1099-DA to the CF/SF program.

Additionally, last year IRSAC recommended<sup>10</sup> that the IRS expand the CF/SF program to include a process to provide the states with corrected information returns *even when the only changes made on the return were to the state boxes on the form*. IRSAC again recommends that the IRS make these changes to the CF/SF program to help streamline providing information to the states.

**Transactions should be reported in the broker's operating time zone, rather than in Coordinated Universal Time (UTC).**

The draft form contains boxes that require the payer to report the date and time that the asset was acquired and sold, and the instructions tell the recipient that these values will be reported in UTC.

U.S. taxpayers (and brokers) are not accustomed to accounting and reporting income in UTC time, and it is not required for other information returns reporting property and/or security transactions. U.S. recipients of information returns are accustomed to information being reported in North American time zones. U.S. recipients of the Form 1099-DA will likely be confused which can lead to increased customer service issues for the payer to manage.

Further, by requiring reporting in UTC time, payers may be forced to report transactions in a different tax year from when the transactions took place according to the books and records of the payer. This will also cause taxpayers to have to reconcile trades on their Form 8949, Sales and Other Dispositions of Capital Assets, adding further complexity to the income tax process. Rather than introducing another nuance into the process, the IRSAC recommends that brokers should report transactions in their operating time zone, which is consistent with other information reporting requirements.

We appreciate your consideration of these comments and IRSAC members are available to discuss any of them further. You can reach us via the IRS Office of National Public Liaison at [publicliaison@irs.gov](mailto:publicliaison@irs.gov).



Annette Nellen  
2024 IRSAC Chair

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<sup>9</sup> Topic No. 804, FIRE system test files and Combined Federal/State Filing (CF/SF) program; <https://www.irs.gov/taxtopics/tc804>.

<sup>10</sup> 2023 IRSAC Public Report, Information Reporting Issue Two (p. 32); <https://www.irs.gov/pub/irs-pdf/p5316.pdf>.

cc:

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Erika Nijenhuis, Senior Counsel, Office of Tax Policy, Dept. of Treasury

### 3. Comments on Draft 2024 Schedule 1 (Form 1040), Additional Income and Adjustments to Income

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Annette Nellen, Chair

**Information Reporting Subgroup:**

Wendy Walker, Chair  
Beatriz Castaneda  
Susan Nakano  
Jon Schausten  
Peter Smith  
Sean Wang  
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**Large Business & International Subgroup:**

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Alison Flores, Chair  
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Elizabeth Boonin  
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Hussein Tarraf  
Lucinda Weigel

**Internal Revenue Service Advisory Council (IRSAC)**  
1111 Constitution Avenue NW, Washington, DC 20224

August 22, 2024

Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, D.C. 20224

Submitted to IRS.gov/FormsComments Re: NTFSchedule1

Re: **Comments on Draft 2024 Schedule 1 (Form 1040),  
Additional Income and Adjustments to Income**

To Whom It May Concern:

The Internal Revenue Service Advisory Council (IRSAC) is pleased to provide comments on the June 21, 2024 draft of Schedule 1 (Form 1040), *Additional Income and Adjustments to Income*.

The IRSAC serves as an advisory body to the Commissioner of the Internal Revenue Service (IRS) and agency leadership. This group consists of 32 volunteer members appointed by the IRS and represents a broad cross-section of interests and areas of expertise in various aspects of tax compliance and administration. The IRSAC provides an organized forum for discussion of tax administration issues between IRS officials and representatives of the public. The IRSAC reviews existing tax policy and administrative issues and makes recommendations in an annual written report to achieve efficient and effective tax administration.

The IRSAC members work within five broad subject matter groups. These subgroups are Information Reporting, Large Business & International, Small Business/Self-Employed, Tax-Exempt/Government Entities, and Taxpayer Services (formerly named “Wage & Investment”).

We recommend changes to improve the reporting of various types of non-wage income, improve the accuracy of income reporting, and reduce the likelihood that a taxpayer will receive IRS Notice CP2000, Proposed Changes to Your Tax Return, despite proper reporting of their income. Our recommendations include modifications to Schedule 1 as well as the instructions to Schedule 1 and certain information reports. In addition, we recommend that the IRS consider creating a form for reconciling forms in the Form 1099-series, such as Form 1099-K, *Payment Card and Third Party*

*Network Transactions*, to aid in clearer reporting of income and reduce the likelihood of the taxpayer receiving a Notice CP2000 that, after time and resources spent by the IRS, the taxpayer and professionals, is resolved with no change to the taxpayer’s Form 1040.

Our comments tie to the IRS Strategic Operating Plan (SOP) Objective 2 to quickly resolve taxpayer issues when they arise.<sup>1</sup> We believe adoption of our recommendations will reduce the number of issues that arise that need to be addressed.

Our detailed comments follow.

### **Recommended Changes to Schedule 1 (Form 1040) and Instructions**

We recommend the following changes to Schedule 1 to help individuals properly report their income (and pay no more than the correct amount of tax) and improve the ability of the IRS to reconcile amounts reported on a taxpayer’s return against amounts reported by third parties as being paid to the taxpayer.

1. Line 8b, Gambling: Expand this line to allow taxpayers to report gross gambling winnings, less the amount of wagers that directly led to a win so taxpayers are properly credited for their basis in a gambling transaction that resulted in gambling winnings. The instructions for this line should clearly explain that only wagers resulting in a gambling award (winnings) should be reported to reduce total gambling winnings. In addition, the instructions to Schedule 1 should state which types of gambling activity already have the wager removed from the reported amount on Form W-2G, *Certain Gambling Winnings*, by the issuer.<sup>2</sup>

To improve income reporting and make it easier for taxpayers and the IRS to reconcile amounts reported on Form W-2G, consider having two lines for reporting gambling winnings and related wagers, with one line for winnings reported on Forms W-2G and the other line for gambling winnings not reported on a Form W-2G.

Example:

b Gambling	Total Forms W-2G _____	.....	less wagers _____	8c	<input type="text"/>
	Winnings not reported on Form W-2G _____		less wagers _____	8c	<input type="text"/>

2. Line 8c, Cancellation of debt: Schedule 1 mentions cancellation of debt (from Form 1099-C, Cancellation of Debt), on Line 8c in Part I, Additional Income. There are no adjustments listed for this income on any lines in Part II, Adjustments to Income. A few clarifications described next should improve taxpayer understanding and reporting of cancellation of debt income and IRS matching of any Form(s) 1099-C received by the taxpayer.

On Line 8c, add the word “Taxable” before “cancellation of debt. The instructions for this line refer taxpayers to Publication 4681, Canceled Debts, Foreclosures,

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<sup>1</sup> IRS, Internal Revenue Service Inflation Reduction Act Strategic Operating Plan FY2023-2031; <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

<sup>2</sup> IRC Sections 6041 and 3402(q); Treas. Reg. § 1.6041-10 defining “reportable gambling winnings.”

Repossessions, and Abandonments. This publication explains that if any amount of the cancellation of debt income reported on Form 1099-C is excluded from income (under Section 108, *Income from discharge of indebtedness*),<sup>3</sup> that exclusion is reported on line 2 of Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment), and reduces the amount to be reported on Line 8c. Presumably, the IRS can determine if the Form(s) 1099-C are properly reported by reviewing the amount(s) on Form(s) 1099-C, along with line 8c of Schedule 1 and line 2 of Form 982. Including this instruction from Publication 4681 in the Schedule 1 instructions should help taxpayers in properly reporting cancellation of debt income.

The instructions accompanying the recipient's Form 1099-C state that the form was issued because the debt was discharged or an identifiable event occurred.<sup>4</sup> Because not all identifiable events necessarily mean the debt was discharged, the instructions accompanying the recipient's Form 1099-C state: "If an identifiable event has occurred but the debt has not actually been discharged, then include any discharged debt in your income in the year that it is actually discharged, unless an exception or exclusion applies to you in that year." However, the instructions do not state how to report Form 1099-C and then back it out because the income belongs in another tax year.

Part II of Schedule 1 should be modified to add a line for cancellation of debt to allow the recipient (who reported the 1099-C amount on Line 8c) to assert that the cancellation of debt income is includible in gross income, all or in part, in a different tax year.

The recipient instructions accompanying Form 1099-C should be expanded to refer the taxpayer to Parts I and II of Schedule 1 (as modified) and its instructions to properly report the Form 1099-C when the amount shown is either all or partially excluded from income or should be reported in a different tax year.

3. Line 8j, Activity not engaged in for profit income: Similar to the recommendations for Line 8b on gambling, we recommend expanding the detail for line 8j to allow taxpayers to report their gross receipts and for those selling inventory, to reduce their gross receipts amount by cost of goods sold to report only the gross income from the activity.<sup>5</sup>
4. Line 8r, Scholarship and fellowship grants not reported on Form W-2: To avoid confusion and encourage individuals to review form instructions to ensure proper reporting, the word "Taxable" should proceed "scholarship" for this line.
5. Line 24h, Attorney fees and court costs for actions involving certain unlawful discrimination claims: This line in Part II, Adjustments to Income, does not have a

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<sup>3</sup> Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended.

<sup>4</sup> While not mentioned in the instructions, "identifiable event" is addressed in Treas. Reg. § 1.6050P-1, Information reporting for discharges of indebtedness by certain entities.

<sup>5</sup> Per Treas. Regs. § 1.61-3(a) and § 1.183-1(e), gross income from an activity is the gross receipts less the cost of goods sold. The current instructions for Schedule 1 (for 2023) refer users of line 8j to Publication 525. The discussion of income from an activity not for profit (page 32 of Pub. 525) should be modified to also note that while expenses are limited to the gross income from the activity (and not deductible at all for 2018 through 2025), cost of sales is allowed to reduce gross receipts.

corollary in Part I to report any taxable award from a lawsuit or settlement (generally reported in Box 3 of Form 1099-MISC). A line should be added to Line 8 for Taxable damages from lawsuit or settlement (see instructions). The instructions should refer the taxpayer to IRS publications explaining when awards are taxable and note that the award may have been included on Form W-2, *Wage and Tax Statement*, as wages (in which case the award is not reported on Line 8). The instructions for the new line and existing Line 24h can also remind the taxpayer to be sure any taxable award represents the full amount received without reduction for payment of attorney fees which are instead either subtracted from income on line 24h or not allowed at all under current law.<sup>6</sup>

6. Line 8z and Line 24z, Other: These lines ask the taxpayer to list the type and amount of other income (8z) or other adjustment (24z). To help in the matching of information returns, add check boxes for these lines so the taxpayer can indicate if the amount is from Form 1099-K, 1099-MISC and/or 1099-NEC, or if no reporting form was received. Please see the next section calling for a new reconciliation form or schedule that would allow for more detail than is possible on lines 8z and 24z.

### **Potential Benefits of a New Form or Schedule for Reconciling Forms 1099**

In addition to the above recommendations concerning revisions to Schedule 1, we also recommend that the IRS consider adopting a new form or schedule to enable taxpayers to reconcile Form 1099-series forms. There are several reasons why various types of information returns may need to be reconciled to be properly reported on the recipient's tax return and to avoid receipt of a Notice CP2000. Generally, these Forms 1099 are correct per the law applicable to the issuer, but for many reasons, they need adjustment to be properly reported on the taxpayer's federal income tax return. Generally, there is no place on Form 1040-series forms for taxpayers to explain the proper taxable amount.<sup>7</sup> This void may lead taxpayers to report income (and pay tax) in a manner that is not correct. For example, duplicative reporting of services income on Forms 1099-K and 1099-NEC, *Nonemployee Compensation*, might be reported as receipts on Schedule C with the duplicative amount backed out as an "expense."

The duplicative reporting of income on Forms 1099-K and 1099-NEC can occur, for example, when a business to whom a sole proprietor provided services is not aware of the "tiebreaker" rule when a contractor is paid in a manner that will lead to issuance of a Form 1099-K.<sup>8</sup>

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<sup>6</sup> If the attorney fees are not deductible under Section 62(a)(20) or (21), they are a miscellaneous itemized deduction subject to the 2%-of-AGI limitation of Section 67 which are not allowed for tax years 2018 through 2025.

<sup>7</sup> Some adjustments may be possible using the "other" lines 8z and 24z on Schedule 1, such as described in the FAQs for Form 1099-K (FAQ 4 and 6 for example); <https://www.irs.gov/newsroom/form-1099-k-faqs>.

<sup>8</sup> Treas. Reg. § 1.6041-1(a)(1)(iv); also explained in the Form 1099 instructions at page 9 (<https://www.irs.gov/pub/irs-pdf/i1099mec.pdf>). Basically, if a contractor is paid via credit or debit card or through a third party settlement organization (TPSO), the business payor is not required to issue Form 1099-



Another situation where there is a need to reconcile erroneous information reporting forms is for a taxpayer who receives one or more Forms 1099-K for sales or personal use items where some items were sold and generated a taxable gain and some were sold and generated an unallowable loss.<sup>9</sup> Or the Form 1099-K might not report taxable income but instead money transfers and it was issued because the people who transferred funds to the taxpayer incorrectly designated to the issuer that they were for goods or services when they were not.

We acknowledge that the draft Schedule 1 for 2024 includes new information at the top of the form about Form 1099-K, as follows:

Name(s) shown on Form 1040, 1040-SR, or 1040-NR	Your social security number
For 2024, enter the amount reported to you on Form(s) 1099-K that was included in error or for personal items sold at a loss.	
<b>Note:</b> The remaining amounts reported to you on Form(s) 1099-K should be reported elsewhere on your return depending on the nature of the transaction. See <a href="http://www.irs.gov/1099k">www.irs.gov/1099k</a> .	

While this should help in some situations, such as where a single Form 1099-K reports one sale producing an unusable loss and another Form 1099-K reports one sale producing a gain, it may not be simple for the taxpayer to understand in a situation where, for example, a single Form 1099-K reports sales of personal items producing both gains and losses. It might not be easy for the IRS to determine if the Form 1099-K information was properly reported. The ability of the taxpayer to list the Form 1099-K amount on a separate form or schedule and explain where any taxable amounts are reported (and how much is not taxable and why) should produce a more reliable and simpler approach to benefit taxpayers, tax professionals and the IRS.

In some situations, a business may want to explain why the aggregate of its Forms 1099-K are much greater than its reported gross receipts. For example, a restaurant that primarily accepts payment via credit cards will have sales tax and tips included in the Form 1099-K amount but not in its reported gross receipts.

The availability of an optional form to reconcile or explain any erroneous information return(s) would provide a solution that avoids the need for taxpayers to report and then back out all or part of the income on the information report which can cause confusion and incorrect reporting.<sup>10</sup> The availability of a reconciliation form could reduce the number of CP2000 notices that are issued and result in no change to the taxpayer's return, but only after time and costs are incurred by both the IRS and taxpayers.<sup>11</sup>

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NEC to the contractor because the payment will be reported on a Form 1099-K by the processor of the credit or debit card or TPSO.

<sup>9</sup> With multiple Forms 1099-K that need reconciliation or if one or more forms report both taxable gains and unusable losses, reconciliation on Schedule 1, lines 8z and 24z, will not be clear as only one figure can be reported on each line.

<sup>10</sup> Recommendation for a new form or schedule to reconcile Forms 1099-K was included in the IRSAC's 2023 Report, pages 74 to 78; <https://www.irs.gov/pub/irs-pdf/p5316.pdf>.

<sup>11</sup> For FY 2023, over 5.4 billion information returns were filed. About 1,100 full-time equivalent positions were devoted to the Automated Underreporter Program (AUR) for FY 2023. See IRS Data Book, 2023, Table 24; <https://www.irs.gov/pub/irs-pdf/p55b.pdf>.

We appreciate your consideration of these comments and IRSAC members are available to discuss any of them further. You can reach us via the IRS Office of National Public Liaison at [publicliaison@irs.gov](mailto:publicliaison@irs.gov).

A handwritten signature in black ink, appearing to read "Annette Nellen". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Annette Nellen  
2024 IRSAC Chair

#### 4. Comments on Notice 2023-56, Federal Income Tax Consequences of Certain State Payments

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##### Internal Revenue Service Advisory Council (IRSAC) 1111 Constitution Avenue NW, Washington, DC 20224

Annette Nellen, Chair      September 6, 2024

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Also submitted to Federal Rulemaking Portal  
<https://www.regulations.gov/document/IRS-2023-0033-0001>

Re:      **Comments on Notice 2023-56, Federal Income Tax Consequences of Certain State Payments**

**Taxpayer Services Subgroup:**  
Alison Flores, Chair  
Robert Barr  
Elizabeth Boonin  
Mason Klinck  
Brayan Rosa-Rodriguez  
Hussein Tarraf  
Lucinda Weigel

Dear Ms. Aron-Dine, Ms. Rollinson, Mr. Vance, Ms. Hanlon-Bolton and Mr. Hauck,

The Internal Revenue Service Advisory Council (IRSAC) is pleased to provide comments on Notice 2023-56, *Federal Income Tax*

*Consequences of Certain State Payments*, released by the IRS on August 30, 2023.<sup>1</sup>

The IRSAC serves as an advisory body to the Commissioner of the Internal Revenue Service (IRS) and agency leadership. This group consists of 32 volunteer members appointed by the IRS and represents a broad cross-section of interests and areas of expertise in various aspects of tax compliance and administration. The IRSAC provides an organized forum for discussion of tax administration issues between IRS officials and representatives of the public. The IRSAC reviews existing tax policy and administrative issues and makes recommendations in an annual written report to achieve efficient and effective tax administration.

The IRSAC members work within five broad subject matter groups. These subgroups are Information Reporting, Large Business & International, Small Business/Self-Employed, Tax-Exempt/Government Entities, and Taxpayer Services (formerly named “Wage & Investment”).

In our comments we recommend:

- Provide a structured needs-based framework for the general welfare exclusion.
- Simplify the information reporting requirements related to the federal taxability of state payments.
- Update online information for state and local payments.

States frequently pass legislation authorizing rebates, tax refunds or other types of payments to their residents in order to stimulate a weakened economy, to provide disaster or economic relief, to address a state surplus, or to encourage taxpayers to make certain types of purchases. Generally, under Section 61, gross income includes all income from whatever source derived. State payments are subject to this general rule unless an exclusion applies, or the item does not represent income (such as a payment to address property damage). Relevant exclusions include certain refunds of previously paid State income taxes, certain payments subject to the general welfare exclusion, and certain disaster relief payments.

### **Provide a structured needs-based framework for the general welfare exclusion**

In response to the COVID-19 pandemic, many states issued payments to their residents in 2022. Some of the state programs were promoted as refunds of state taxes previously paid, others were promoted as a payment for general welfare, disaster relief purposes, to address higher prices, or other reasons. On February 10, 2023, the IRS issued IR-2023-23<sup>2</sup> to provide guidance to taxpayers as to how to treat 2022 state tax refunds for federal tax purposes. Generally, the news release indicated that each state program required a fact-intensive review to determine whether the payments were subject to federal income tax, but that the IRS had determined not to challenge positions that the payments made from 17 states was excludible from income for these taxpayers for the 2022 calendar year. On August 30, 2023, the IRS issued Notice 2023-56 in response to requests for guidance from states and taxpayers

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<sup>1</sup> IR-2023-158 (Aug. 30, 2023), IRS issues guidance on state tax payments; <https://www.irs.gov/newsroom/irs-issues-guidance-on-state-tax-payments>.

<sup>2</sup> IR-2023-23 (Feb. 10, 2023); <https://www.irs.gov/newsroom/irs-issues-guidance-on-state-tax-payments-to-help-taxpayers>.

related to the federal income tax consequences of state payments made in 2023 and future years.

Notice 2023-56 was issued “as part of the IRS’s efforts to provide additional certainty to states and their residents regarding the federal income tax consequences of state payments made to taxpayers.”<sup>3</sup> In this notice, the IRS provides background on the tax treatment of state tax refunds, payments that might meet the general welfare exclusion, disaster relief payments, and other payments. In describing payments that fall under the general welfare exclusion, the IRS notes that one of the three criteria is that the payment is based on the need of the recipient but does not provide a need-based framework for states to determine whether their payments qualify for the general welfare exclusion. Notice 2023-56 also does not address situations where payments generally represent a tax refund for most taxpayers, but other taxpayers benefit because the payment was not limited to tax liability. Notice 2023-56 does not address a situation where a payment could potentially be characterized as a partial tax refund and a partial taxable payment.

To provide states greater clarity, the IRS should issue further guidance providing a structured framework for applying the general welfare exclusion, including a clearly defined needs-based framework. Leveraging the rules under Section 36B(d)(3)(A) would provide such a framework. Under Section 36B, households with income no greater than 400% of the federal poverty line (FPL) for their household size may be eligible for federal assistance in purchasing health insurance. This measurement factors in household size, adjusts annually for inflation, and has separate measures for the 48 contiguous states, Hawaii and Alaska.<sup>4</sup> The IRS should also consider providing methods to increase the needs-based framework for high cost of living areas, such as by allowing states to petition for a higher amount or utilizing guidance applicable to high per diem rate locations.

### **Simplify the information reporting requirements related to the federal taxability of state tax payments**

States rely on the IRS to provide guidance with respect to information reporting obligations on Forms 1099. Notice 2023-56 explains the different information reporting requirements pursuant to Sections 6041 and 6050E and the related Forms 1099-MISC and 1099-G. However, the examples contemplated in Notice 2023-56 do not contain any information about how to report payments from a state program that are partially taxable, fully taxable, or that result in a taxable payment to some taxpayers at the federal level because the payments did not meet the general welfare exclusion.

Additionally, the current information reporting requirements for reporting taxable grants and other tax refunds (that do not represent income taxes) is convoluted. Notice 2023-56 explains that refunds of property taxes are reportable on Form 1099-MISC because they are not payments of income tax refunds. The instructions for Form 1099-G Box 2 indicate that issuers should include “refunds or carryforward credits of overpayments of tax due to refundable state tax credits and incentive payments that are paid under an existing state tax law and administered by the state taxing agency.” The instructions for Form 1099-G indicate

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<sup>3</sup> IR-2023-158 (Aug. 30, 2023); <https://www.irs.gov/newsroom/irs-issues-guidance-on-state-tax-payments>.

<sup>4</sup> Dept. of Health and Human Services, Poverty Guidelines; <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

that a state should report taxable grants in Box 6 of the Form 1099-G but that some scholarship and fellowship grants should be reported on Form 1099-MISC.

Even more confusing, these information returns use different payment thresholds. Form 1099-G is required to be issued when reportable payments to a taxpayer aggregate to \$10 or more in the calendar year. However, Form 1099-MISC is required to be issued when reportable payments to a taxpayer aggregate to \$600 or more in the calendar year.

The IRSAC recommends that the IRS simplify the information reporting requirements related to the federal taxability of all state payments by streamlining reporting to a single information return, Form 1099-G.

Currently, income tax refunds are reported in Box 2 unless the state can determine that the taxpayer itemized deductions on their federal income tax return. The IRS could add a new box to Form 1099-G to represent tax rebates and refunds that do not represent income tax, such as state tax rebate payments and refundable tax credits that do not meet the general welfare exclusion or property tax refunds that are currently reported in Box 3 of Form 1099-MISC. Similarly, some taxable grants are currently reportable in Box 6 of Form 1099-G while others are reportable in Box 3 of Form 1099-MISC. The new box added to Form 1099-G could also be used by states to report payments of scholarship and fellowship grants that are currently reported on Form 1099-MISC.

Reporting of all state payments to residents that do not represent payments for services performed by employees or nonemployees and/or state lottery or prize payments to Form 1099-G would result in consistent reporting which ultimately would minimize the burden and confusion for states, taxpayers and the IRS.

### **Update online information for state and local payments**

The IRSAC also recommends that the IRS update the online help pages related to state payments. The IRS help page “IRS issues guidance on state tax payments”<sup>5</sup> currently includes bolded text that indicates most taxpayers don’t have to include state tax refund amounts on their federal return. Since taxpayers in various states are required to pay federal income taxes related to some state tax payments, the IRSAC recommends that the IRS update this page to provide greater clarity regarding various types of payments received from state and local governments.

We appreciate your consideration of these comments and IRSAC members are available to discuss any of them further. You can reach us via the IRS Office of National Public Liaison at [publicliaison@irs.gov](mailto:publicliaison@irs.gov).



Annette Nellen  
2024 IRSAC Chair

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<sup>5</sup> IRS issues guidance on state tax payments (Aug. 30, 2023); <https://www.irs.gov/newsroom/irs-issues-guidance-on-state-tax-payments>.

## 5. Recommendations for Future Form W-4, Employee's Withholding Certificate

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September 6, 2024

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Hussein Tarraf  
Lucinda Weigel

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Submitted to IRS.gov/FormsComments Re: NTFW-4

**Re: Recommendations for Future Form W-4, Employee's Withholding Certificate**

The Internal Revenue Service Advisory Council (IRSAC) is pleased to provide comments in advance of future updates to Form W-4, *Employee's Withholding Certificate*.

The IRSAC serves as an advisory body to the Commissioner of the Internal Revenue Service (IRS) and agency leadership. This group consists of 32 volunteer members appointed by the IRS and represents a broad cross-section of interests and areas of expertise in various aspects of tax compliance and administration. The IRSAC provides an organized forum for discussion of tax administration issues between IRS officials and representatives of the public. The IRSAC reviews existing tax policy and administration issues and makes recommendations in an annual written report to achieve efficient and effective tax administration.

The IRSAC members work within five broad subject matter groups. These subgroups are Information Reporting, Large Business & International, Small Business/Self-Employed, Tax-Exempt/Government Entities, and Taxpayer Services (formerly named Wage & Investment).

Our comments in advance of future updates to Form W-4 address ways to simplify form completion for employees, help prevent under-withholding on forms completed now and after expiration of certain provisions of the Tax Cuts and Jobs Act of 2017 (TCJA) after 2025, and provide a bridge between current law and future changes as follows:

1. Revert Form W-4 to the prior version; keep the current format as an alternate method to transition back to the previous version of Form W-4 for a year.
2. Simplify Form W-4 options for taxpayers who work multiple jobs or have a spouse who also works and provide easy to use instructions to understand the impact to their taxable income.



3. Future-proof Form W-4 for taxpayers with qualifying children or relatives.
4. Standardize the format for electronic forms for claiming exemption from withholding.
5. Inform taxpayers of the need to update Form W-4.
6. Provide a robust communication campaign and a computation bridge to facilitate TCJA changes effective January 1, 2026.

Details of our comments follow.

### **1. Revert Form W-4 to the prior version; keep the current format as an alternate method to transition back to the previous versions of Form W-4 for a year**

In 2020, the IRS significantly revised Form W-4 to remove withholding allowances and provide increased transparency, simplicity, and accuracy of the form.<sup>1</sup> However, employees continue to struggle with the form prompts and prefer the simpler method of entering their withholding allowances.

Reverting to the pre-2020 version of Form W-4, while keeping the current base format as an optional method, would help employees. This would also accommodate upcoming law changes associated with the expiration of various provisions of the TCJA affecting individuals and will provide the best continuity and user experience for employees and employers going forward.

When completing a Form W-4, employees—both those new to the workforce and those who have completed multiple Forms W-4 over the years often experience fear they will underpay their tax liability for the year. The IRS needs to consider simplifying Form W-4 to create clarity for employees to understand what the form does, keep from overwhelming taxpayers, and accurately capture the employee’s obligations.<sup>2</sup>

### **2. Simplify Form W-4 options for taxpayers who work multiple jobs or have a spouse who also works and provide easy to use instructions to understand the impact to their taxable income**

Form W-4 currently provides several options for taxpayers with multiple jobs or who are married to a spouse who also works. While intended to provide increased accuracy, the options presented may overwhelm and confuse taxpayers who try to complete the form as quickly as possible and have the unintended impact of contributing to under withholding. The IRSAC intends for the following recommendations to streamline the options and support increased use of Step 2.

- Rename Step 2: “I work multiple jobs or my spouse also works.”
- Remove steps 2(a) and 2(b) from the face of the form and refer to the instructions for more information. Retain support for steps 2(a) and 2(b) on [irs.gov](https://www.irs.gov) and in the Form W-4 instructions.
- Revise step 2(c) so it applies to all employees who have multiple concurrent jobs.

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<sup>1</sup> FAQs on the 2020 Form W-4 at <https://www.irs.gov/newsroom/faqs-on-the-2020-form-w-4>.

<sup>2</sup> The IRS Tax Withholding Estimator should continue to be maintained and updated to reflect future changes tax law impacting withholding; <https://www.irs.gov/individuals/tax-withholding-estimator>.



- Add a checkbox to step 2 for taxpayers who are married filing jointly (MFJ) but would like withholding under the single filing status.

### **3. Future-proof Form W-4 for taxpayers with qualifying children or relatives**

Form W-4 currently provides specific credit values for the child tax credit and the other dependent credit. However, due to future uncertainty surrounding the value of the child tax credit, the possibility that the child tax credit will be partially or fully refundable in the future, the expiration of the other dependent credit, and the planned resumption of dependent exemptions, this approach is likely to yield highly inaccurate withholding in future tax years.

During 2021, when the child tax credit was partially refundable, many taxpayers received lower refunds than expected or had a balance due because of duplicate accounting for the credit; once through employer withholding, and once through the advance.

The IRSAC intends that the following recommendations provide greater certainty that a completed Form W-4 would more accurately reflect the law in effect during the withholding year and end fear and confusion related to completing Form W-4.

1. For taxpayers completing Form W-4 based on the prior approach using withholding allowances, prompt taxpayers to enter the total number of withholding allowances (dependents). This method would not consider the child tax credit, or any potential other dependent credit associated with dependents.
2. For taxpayers completing Form W-4 using an optional method based on the current form:
  - a. Revise Step 3 to require the number of dependents and each dependent's date of birth. This would facilitate a computational bridge as the value of the child tax credit will potentially fluctuate in future years or become fully or partially advanced, and the future of the other dependent credit and dependent exemptions is unclear.
  - b. Add alert messaging in bold in Step 3 stating that because only one taxpayer may claim a dependent, a dependent should only be claimed on one Form W-4 (if the taxpayer has more than one job or the taxpayer's spouse also has a job). Repeat this messaging in the Form W-4 instructions to prevent under-withholding for taxpayers.
  - c. Indicate that Step 3 is optional. Add an explanation in the Form W-4 instructions why the step is optional.

### **4. Standardize the format for electronic forms for claiming exemption from withholding**

The current version of the Form W-4 allows taxpayers to claim a withholding exemption by writing the word "Exempt" in Step 4. There are no entries or criteria on the form for employers to reproduce this step or question electronically. This causes inconsistent

implementation of the exempt process for forms taxpayers complete electronically and may make it easier for employees who are not exempt from withholding to add the word exempt.

The choice to claim a withholding exemption should be supported on the alternate version of Form W-4 (based on the current version). The form itself should be changed to include questions for taxpayers asserting exemption to complete. This change should bring uniformity to the presentation of the exempt choice on electronically completed forms.

### **5. Inform taxpayers of the need to update Form W-4**

Taxpayers often believe that the only time they need to complete Form W-4 is when they start a new job.

Including an alert on Form W-4 alerting the taxpayer to the fact that Form W-4 should be updated if the taxpayer has a major income change, change in marital status, has a change in the number of dependents or a dependent reaches age 17 should help employees understand that Form W-4 should be completed as life circumstances change. This alert should be found directly above the signature line on the form. Consider adding a checkbox taxpayers must complete to signify they read the alert. Request payroll providers and preparers to advise taxpayers they need to update their W-4 as well.

Taxpayers often ask their payroll department or human resources team to tell them how to complete the form. Including a phrase at the top of the form saying “Your employer cannot complete the form for you; view the instructions if you have questions. Tax law requires your employer to withhold taxes based on your entries.” will help employees understand they must make the form entries themselves and cannot rely on their employer for completion.

### **6. Provide a robust communication campaign and a computation bridge to facilitate changes effective January 1, 2026**

Employers currently support withholding based on the pre-2020 version of Form W-4 as well as the current version. Unless all employees are required to update their withholding requests, employers must continue to support older versions of the form. The IRS should provide new computation bridges as soon as possible to allow employers to develop plans to move forward with withholding under the rules in effect for January 1, 2026. These recommendations are intended to facilitate that process.

- Keep the Form W-4 as simple as possible and provide resources on the IRS website to help employees and employers. Individuals become overwhelmed when the form is one page, and the instructions are four to five pages long.
- Develop a communication plan aimed at employees, employers, and the public intended to educate and provide a call to action to update withholding. Utilize partnerships with accounting firms, CPAs, PayrollOrg, Society for Human Resource Management (SHRM) and similar organizations to assist in informing the public about these changes and saturate resources so employers know about the changes. The IRS can use social media such as Instagram, LinkedIn, Facebook, and Twitter (X) with short videos and materials to reach taxpayers who may not view traditional media outlets.

- Provide a back-end computation bridge as soon as possible to enable employers and payroll providers to begin planning for form changes and expected expiration of some individual cuts of the TCJA effective January 1, 2026. Employers need at least six months of lead time to implement a bridge.
- Release a draft version of [Pub. 15-T](#), *Federal Income Tax Withholding Methods*, as well as a draft version Form W-4, as soon as possible so employers and payroll providers will have the ability to provide comments and feedback on the computation bridge. Employers need at least six months of lead time to implement a bridge.
- Provide transition relief to employers and employees as they undertake to support payroll withholding under another version of Form W-4. Transition relief could include waiving the late payment penalty for first quarter deposits; providing additional time to put a revised W-4 into effect; and waive the penalty for underpayment of tax during 2026. Provide educational materials for employers to distribute to their employees such as videos, easy to understand posters, pamphlets, and guides to post and share. In addition, partner with accounting firms, CPAs, PayrollOrg, SHRM, and other partner organizations to educate taxpayers and companies of these changes.
- Implement corresponding updates and computation bridges to Forms W-4P, W-4S, and W-4V. Inform the public on when these changes will go into effect for these forms and prepare educational materials to aid in transition.
- Increase the tentative withholding amount in the withholding tables in Pub. 15-T by 2%.<sup>3</sup>

We appreciate your consideration of these comments and IRSAC members are available to discuss any of them further. You can reach us via the IRS Office of National Public Liaison at [publicliaison@irs.gov](mailto:publicliaison@irs.gov).

Sincerely,



Annette Nellen  
2024 IRSAC Chair

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<sup>3</sup> Before 2020, individual income tax withholding generally made up about 38 to 39% of IRS gross collections. In 2021, 2022, and 2023, the percentage was generally 36 to 37%. A post-TCJA computation bridge should reflect increased withholding, and a 2% tentative withholding amount would assist in simplifying the computations. See SOI Tax Stats - Collections and refunds, by type of tax - IRS Data Book Table 1 at <https://www.irs.gov/statistics/soi-tax-stats-collections-and-refunds-by-type-of-tax-irs-data-book-table-1>.

## 6. Comments on Notice 2024-55, Certain Exceptions to the 10 Percent Additional Tax Under Code Section 72(t)

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October 10, 2024

**Annette Nellen, Chair**  
**Information Reporting Subgroup:**  
Wendy Walker, Chair  
Beatriz Castaneda  
Susan Nakano  
Jon Schausten  
Peter Smith  
Sean Wang  
Nicholas Yannaci

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2024-55)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Submitted via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) for Notice 2024-55

**Large Business & International Subgroup:**  
Katrina Welch, Chair  
Andrew Bloom  
Anthony Massoud  
Dawn Rhea  
Thomas Wheadon

**Re: Comments on Notice 2024-55, Certain Exceptions to the 10 Percent Additional Tax Under Code Section 72(t)**

To Whom It May Concern:

**Small Business/Self-Employed Subgroup:**  
Jeff Porter, Chair  
Amanda Aguillard  
Christine Freeland  
Aidan Hunt  
Annette Nellen  
Lawrence Sannicandro

The Internal Revenue Service Advisory Council (IRSAC) is pleased to provide comments in response to Notice 2024-55, *Certain Exceptions to the 10 Percent Additional Tax Under Code Section 72(t)*, published at 2024-28 I.R.B. 31.

**Tax Exempt/Government Entities Subgroup:**  
Brian Yacker, Chair  
Joseph Bender  
Sam Cohen  
Steven Grieb  
Jodi Kessler  
Tara Sciscoe  
Cory Steinmetz

The IRSAC serves as an advisory body to the Commissioner of the Internal Revenue Service (IRS) and agency leadership. This group consists of 32 volunteer members appointed by the IRS and represents a broad cross-section of interests and areas of expertise in various aspects of tax compliance and administration. The IRSAC provides an organized forum for discussion of tax administration issues between IRS officials and representatives of the public. The IRSAC reviews existing tax policy and administrative issues and makes recommendations in an annual written report to achieve efficient and effective tax administration.

**Taxpayer Services Subgroup:**  
Alison Flores, Chair  
Robert Barr  
Elizabeth Boonin  
Mason Klinck  
Brayan Rosa-Rodriguez  
Hussein Tarraf  
Lucinda Weigel

The IRSAC members work within five broad subject matter groups. These subgroups are Information Reporting, Large Business & International, Small Business/Self-Employed, Tax-Exempt/Government Entities, and Taxpayer Services (formerly named Wage & Investment).

Our comments primarily address the subject of repayment. As suggested in the IRS request for comments, our observations and recommendations address the subject matter of Notice 2024-55, as well as repayments of other distributions described in Section 72(t). We offer recommendations for additional guidance needed beyond what is covered in the Q&As in Notice 2024-55.

## Summary of Comments and Recommendations

- Confirm that the practical maximum that can be repaid for Emergency Personal Expense distributions is \$4,000.
- Recommend that for repayments of Emergency Personal Expense Distributions, Domestic Abuse Victim Distributions, and other distributions under Section 72(t) permitted within 3-years of distribution, a plan administrator may rely on a statement by the taxpayer that the repayment is permitted.
- Provide model language for a statement upon which a plan administrator may rely to accept repayment of a distribution made under Section 72(t).
- Confirm that exemption from the 10% additional tax described by Section 72(t)(1) is not a prerequisite for a taxpayer to make a repayment of a distribution described by Section 72(t).
- Confirm that there is no annual limit to the amount that a taxpayer may take as a Domestic Abuse Victim Distribution or Repayment under Section 72(t)(2)(K).

Our recommendations are explained below.

### Emergency Personal Expense Repayment

Q. A-6 and A-7 build on the examples presented in A-5 and A-6. In the example, Employee A can take a second emergency personal expense distribution in less than three years following the 2025 distribution because they have continued contributing to Plan C. But Employee A still has the right to repay that initial \$500 personal expense distribution until June 2028. The example in A-5 plus example A-6 imply that Employee A, who has taken \$1,500 in the course of two emergency personal expense distributions, has the right to repay that \$1,500 to Plan C, and the entire \$1,500 can be repaid in a single sum (as long as the single payment is within three-years of the first distribution of \$500). Given the three-year repayment period and that distributions are permitted each calendar year given other requirements are satisfied, a taxpayer may distribute and therefore repay an aggregate of up to \$4,000 in emergency personal expense distributions in a single repayment transaction if elective deferrals and sufficient and subsequent calendar-year distributions sum to that potential \$4,000.<sup>1</sup> It appears that the practical maximum that may be outstanding as emergency personal expense distributions during a three-year period and so potentially allowed to be repaid is \$4,000. If this is not the intent, clarification is needed.

Q. A-7 indicates that an individual may repay an emergency personal expense distribution to an applicable eligible retirement plan in which the individual is a beneficiary and to

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<sup>1</sup> The \$4,000 amount is derived considering that up to four calendar year distributions can be made within a period that is three years from the initial distribution. For example, the taxpayer may take a distribution on June 1 of Year 1, and then also on May 1 of Year 2, Year 3, and Year 4. May 1 of Year 4 is less than three years since June 1 of Year 1. Thus, the sum of distributions made in Year 1 through Year 4 can be up to \$4,000.

which a rollover can be made, regardless of whether the distribution came from the plan where the repayment is made. We recommend that guidance be provided that the plan administrator may rely on a taxpayer statement that an amount is a repayment of one or more emergency personal expense distributions received within three years of the distribution. Having potentially no actual knowledge of the distributions, the plan administrator might have no information beyond statements made by the taxpayer making a repayment. Additionally, we request that model language for such a statement be provided.

### **Repayment of Distributions Not Subject to the 10% Additional Tax under Section 72(t)(1)**

A distribution that would not otherwise be subject to the 10% additional tax under Section 72(t)(1) may be intended by the taxpayer to be used as an emergency personal expense distribution, domestic abuse victim distribution or other distribution described by Section 72(t) as being repayable to a retirement plan within three years. Such distribution may be taken from an account or under circumstances that would not incur the 10% additional tax under Section 72(t)(1). Examples include a distribution from a Roth IRA held for more than 5-years, or a distribution taken from a traditional IRA account by an account holder age 59½ years or older. The IRSAC asks for confirmation in guidance that such a distribution, if taken for a purpose described by Section 72(t), may also be repaid within three years of the distribution, and that the waiver of the 10% early withdrawal tax under Section 72(t)(1) is not a prerequisite for a taxpayer to repay a distribution described in Section 72(t).

### **Domestic Abuse Victim Distribution Repayment**

Q. B-6 indicates that an individual may repay a domestic abuse victim distribution to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made, regardless of whether the distribution came from the plan being repaid. We recommend that the plan administrator may rely on a taxpayer statement that an amount is a repayment of one or more domestic abuse victim distributions made in the past three years. Having potentially no actual knowledge of the distributions, the plan administrator might have no information beyond statements made by the taxpayer making a repayment. Additionally, we request that model language for such a statement be provided.

In addition, unlike the statutory wording for distributions for certain emergency expenses at Section 72(t)(2)(I) which refers to an annual limitation, no such wording exists at Section 72(t)(2)(K) for distributions from retirement plans in case of domestic abuse, thus implying only a per distribution limitation. The IRSAC requests guidance to confirm that there are no annual limitations on distributions in case of domestic abuse victim so there is no upper limit on an amount that can be accepted as a domestic abuse victim distribution repayment.

We appreciate your consideration of these comments and recommendations. IRSAC members are available to discuss any of them further. You can reach us via the IRS Office of National Public Liaison at [publicliaison@irs.gov](mailto:publicliaison@irs.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "A. Nellen". The signature is fluid and cursive, with the first letter being a large capital "A".

Annette Nellen  
2024 IRSAC Chair

## **7. Comments on Draft Filer Instructions for Form 1099-DA, Digital Asset Proceeds from Broker Transactions**

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### **Internal Revenue Service Advisory Council (IRSAC) 1111 Constitution Avenue NW, Washington, DC 20224**

October 11, 2024

**Annette Nellen, Chair**

**Information Reporting  
Subgroup:**

Wendy Walker, Chair  
Beatriz Castaneda  
Susan Nakano  
Jon Schausten  
Peter Smith  
Sean Wang  
Nicholas Yannaci

Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, D.C. 20224

Submitted to IRS.gov/FormsComments Re: NTF1099-DA

**Re: Comments on Draft Filer Instructions for Form 1099-DA, Digital Asset Proceeds from Broker Transactions**

**Large Business &  
International Subgroup:**

Katrina Welch, Chair  
Andrew Bloom  
Anthony Massoud  
Dawn Rhea  
Thomas Wheadon

To Whom It May Concern:

The Internal Revenue Service Advisory Council (IRSAC) is pleased to provide comments in response to the request accompanying the release of the draft 2025 filer instructions (dated September 30, 2024) for Form 1099-DA, Digital Asset Proceeds From Broker Transactions, as well as the Request for Comments; Digital Asset Proceeds From Broker Transactions posted in the [Federal Register](#) on October 7, 2024, with respect to the draft version of 2025 Form 1099-DA, Digital Asset Proceeds From Broker Transactions (dated September 9, 2024).

**Small Business/Self-  
Employed Subgroup:**

Jeff Porter, Chair  
Amanda Aguillard  
Christine Freeland  
Aidan Hunt  
Annette Nellen  
Lawrence Sannicandro

The IRSAC serves as an advisory body to the Commissioner of the Internal Revenue Service (IRS) and agency leadership. This group consists of 32 volunteer members appointed by the IRS and represents a broad cross-section of interests and areas of expertise in various aspects of tax compliance and administration. The IRSAC provides an organized forum for discussion of tax administration issues between IRS officials and representatives of the public. The IRSAC reviews existing tax policy and administrative issues and makes recommendations in an annual written report to achieve efficient and effective tax Administration.

**Tax  
Exempt/Government  
Entities Subgroup:**

Brian Yacker, Chair  
Joseph Bender  
Sam Cohen  
Steven Grieb  
Jodi Kessler  
Tara Sciscoe  
Cory Steinmetz

The IRSAC members work within five broad subject matter groups. These subgroups are Information Reporting, Large Business & International, Small Business/Self-Employed, Tax-Exempt/Government Entities, and Taxpayer Services (formerly named Wage & Investment).

**Taxpayer Services  
Subgroup:**

Alison Flores, Chair  
Robert Barr  
Elizabeth Boonin  
Mason Klinck  
Brayan Rosa-Rodriguez  
Hussein Tarraf  
Lucinda Weigel



Our comments on the draft Form 1099-DA filer instructions (dated September 30, 2024) address the following matters:

1. Digital asset brokers should be allowed to default recipients into receiving electronic recipient statements.
2. The box for “Applicable checkbox on Form 8949” should not be required for calendar year 2025 transactions.
3. Box 1a “Code for digital asset” should not be required for calendar year 2025 transactions.
4. The IRS should consider providing taxpayers with a link that allows them to access digital asset token identifier numbers in an easily accessible manner.
5. Box 8 “Check if Broker Relied on Customer-Provided Acquisition Information” should be eliminated from the form.
6. Box 10 “Digital asset is a noncovered security because” should be eliminated from the form.
7. Box 12b “If transferred in, provide transfer-in date” should either be eliminated from the form or if lots were transferred in on multiple dates then brokers should be able to leave the box blank or write in “various”.
8. The 2025 Instructions for Form 1099-DA should be updated to remove typographical errors in form names.

Details of our comments follow.

### **Recommended Changes to Draft Filer Instructions (dated September 30, 2024) to Form 1099-DA, Digital Asset Proceeds from Broker Transactions**

#### **1. Digital asset brokers should be allowed to default recipients into receiving electronic recipient statements.**

Regulations under Section 6045 require brokers to mail recipient statements to the last known address of the customer. The final regulations for Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions released on June 28, 2024,<sup>1</sup> do not address how statements must be delivered to recipients. Brokers are left to apply the current Section 6045 requirement to recipient statements for digital asset transactions.

Public Law 107-147 authorized issuers of Forms 1099 to electronically furnish such statement (without regard to any first-class mailing requirement) to any recipient who has consented to the electronic provision of the statement in a manner similar to the one permitted under regulations issued under Treas. Reg. § 31.6051-1(j) or in such other

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<sup>1</sup> Final Regulations: Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, T.D. 10000, July 9, 2024; <https://www.govinfo.gov/content/pkg/FR-2024-07-09/pdf/2024-14004.pdf>.

manner as provided by the Secretary. Procedures for electronic delivery of recipient statements are laid out in Section 4.6 of Publication 1179 General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.<sup>2</sup>

It is impractical to require digital asset brokers to develop an affirmative consent system for customers who will now be 1099-DA recipients to opt into receiving electronic Forms 1099 because most digital asset brokers conduct *all* transactions with their customers electronically. Issuing statements via the U.S.P.S. is also unmanageable given the large number of Forms 1099-DA that are expected to be issued. Digital asset brokers do not send physical mail to their clients for any interactions and so may not have a current mailing address for those recipients. Generally, these brokers communicate with their clients solely through electronic means. Each customer has therefore, either actually or de facto, consented to electronic receipt of all communications. In addition, the current burden estimates contained in the final regulations for reporting digital asset sales do not factor in the high cost and environmental impact of printing and mailing up to eight billion Forms 1099-DA. Preliminary evaluation of the draft Form 1099-DA requirements by the firm of one IRSAC member indicates that there are individuals who will receive thousands of Forms 1099-DA.

The IRS should provide guidance to allow brokers who facilitate trades of digital assets through electronic means, such as a smartphone, tablet, computer, or similar technology, to be permitted to furnish Form 1099-DA statements to a recipient electronically without requiring the recipient to first consent separately to receive such statements electronically. Taxpayers have demonstrated they have the means to access information return statements electronically because they conduct all their transactions and receive current communications electronically from the digital asset broker. These two factors combine to satisfy the requirements of Publication 1179 for electronic delivery of Forms 1099-DA.

## **2. The box for “Applicable checkbox on Form 8949” should not be required for calendar year 2025 transactions.**

The Draft 2025 Instructions for Form 1099-DA state that for sales effected in 2025 brokers must complete all unnumbered boxes on Form 1099-DA except the CUSIP (Committee on Uniform Security Identification procedures) number box, which may be left blank if there is no applicable number. The final regulations require brokers to report the adjusted basis of digital assets if they were acquired on or after January 1, 2026.<sup>3</sup> Brokers who do not have cost basis systems in place prior to this date will not be able to provide recipients of Form 1099-DA with a code that will assist them in reporting the transaction on Form 8949, Sales and other Dispositions of Capital Assets. Brokers should be permitted to leave this box blank for calendar year 2025 transactions.

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<sup>2</sup> P.L. 107-147, title IV, Sec. 401, Mar. 9, 2002, 116 Stat. 40.

<sup>3</sup> *Id.*

**3. Box 1a “Code for digital asset” should not be required for calendar year 2025 transactions.**

The instructions require brokers to enter a nine alphanumeric characters digital token identification issued by the Digital Token Identification Foundation (DTIF). While we recognize the need to have a uniform identifier for digital assets, U.S. Digital Asset brokers do not currently utilize the identifiers created by this U.K. based foundation. We recommend the IRS delay the requirement to report the identifier to no earlier than calendar year 2026 transactions to provide digital asset brokers with the time necessary to integrate these numbers into their systems and to educate their users on its use.

**4. The IRS should consider providing taxpayers with a link that allows them to access digital asset token identifier numbers in an easily accessible manner.**

The Instructions to Form 1099-DA directs brokers to the Digital Token Identifier Foundation (<https://dtif.org>) to locate the digital asset token identifier numbers. This website is not intuitive and requires users to download the registry in JSON dataset format. While brokers may have or can obtain the required programs to read the registry, ordinary taxpayers will not. The IRS should consider providing taxpayers with access to this information in a more friendly format on IRS.gov or encourage DTIF to do so on their website.

**5. Box 8 “Check if broker relied on customer-provided acquisition information” should be eliminated from the form.**

The Form 1099-DA instructions require brokers to check a box if customer-provided information was relied on to identify which digital assets were sold, exchanged or otherwise disposed of. This information is not required of brokers issuing Form 1099-B Proceeds from Broker and Barter Exchange Transactions and does not assist taxpayers in completing their income tax returns. Cost basis systems used in the digital assets industry (and in traditional finance) do not currently tag lots that are disposed of in this manner. It is recommended that the box be eliminated as complying with this requirement significantly increases the burden on brokers issuing the form and provides no meaningful assistance to the taxpayers in preparing their return.

**6. Box 10 “Digital Asset is a noncovered security because” should be eliminated from the form.**

Both the Form 1099-B and draft Form 1099-DA (dated September 9, 2024) require brokers to check a box indicating whether a lot is covered or noncovered under section 6045. But the draft Form 1099-DA goes further by requiring digital asset brokers to check a box indicating the reason the lot is noncovered. This information is not necessary for taxpayers to complete their income tax returns. Additionally, traditional cost basis systems are programmed to tag lots as covered and noncovered, but they do not track the reason. Further the draft form only contemplates three reasons lots may be noncovered: they were purchased before 2023, the broker did not provide hosted wallet services, or it was transferred to the broker before disposition. Other reasons may, and often do, exist. For example, a lot may be noncovered because of the absence of an issuer statement, or for other unknown reasons that again, are not captured by cost basis systems.

It is also unclear whether a broker needs to issue a separate form for each reason a lot is noncovered or whether multiple boxes may be checked per transaction. If brokers are required to issue a separate form per reason this may significantly increase the number of forms required per transaction adding to the costs of compliance and environmental impact of issuing the reporting. We recommend removing this box from Form 1099-DA. In addition to significant resources necessary to build systems capable of tracking the reason and issue a larger volume of forms, providing this information is not necessary for taxpayers to complete their income tax return. .

**7. Box 12b “If transferred in, provide transfer-in date,” should either be eliminated or if lots were transferred in on multiple dates brokers should be allowed to leave the box blank or write in “various”.**

The instructions require brokers to provide the date lots were transferred in if the lots that were disposed of were transferred into a custodial account. It is not clear whether a separate form will need to be completed if the lots that were disposed of were transferred in on multiple dates or if brokers can leave the box blank as they do with Box 1 if the digital assets were acquired on multiple dates. If brokers are required to issue a separate form for lots transferred in on separate dates it will increase the number of forms issued per transaction increasing costs and environmental impact. The IRS should allow brokers to leave the box blank or to enter the word “various” if the transferred-in lots were acquired on separate dates.

**8. The 2025 instructions for Form 1099-DA should be updated to remove errors in form names.**

There are two typographical errors on page 6 of the draft instructions for Form 1099-DA:

- Form 8949, Sales or Other Dispositions of Capital Assets should be updated to Form 8949, Sales and Other Dispositions of Capital Assets.
- Schedule D (Form 1040), Capital Gain and Losses should be updated to Schedule D (Form 1040), Capital Gains and Losses.

We appreciate your consideration of these comments and IRSAC members are available to discuss any of them further. You can reach us via the IRS Office of National Public Liaison at [publicliaison@irs.gov](mailto:publicliaison@irs.gov).

Note: The IRSAC previously submitted comments on the draft 2025 Form 1099-DA (April 18, 2024 version); letter dated June 21, 2024.

Sincerely,



Annette Nellen  
2024 IRSAC Chair



## APPENDIX B: 2024 IRSAC Report Recommendations Mapped to the IRS Strategic Operating Plan (SOP) Initiatives

The objectives and initiatives in the table presented in this appendix are from the Internal Revenue Service Inflation Reduction Act Strategic Operating Plan, FY 2023-2031 (Publication 3744).

- News release on the report (IR-2023-72; April 6, 2023):  
<https://www.irs.gov/newsroom/irs-unveils-strategic-operating-plan-ambitious-effort-details-a-decade-of-change>
- Links to the SOP report, supplement and related information:  
<https://www.irs.gov/about-irs/irs-inflation-reduction-act-strategic-operating-plan>

Following is a summary list of the initiatives within each of the five Objectives.

### Initiatives in Objective 1 on Taxpayer Services

**Objective 1** Dramatically improve services to help taxpayers meet their obligations and receive the tax incentives for which they are eligible

<p><b>1.1 Improve the availability and accessibility of customer service:</b> Taxpayers will be able to receive on-demand customer service or schedule service ahead of time</p>	<p><b>1.5 Explore direct file:</b> The IRS will explore providing taxpayers the option to file certain tax returns directly with the IRS online</p>	<p><b>1.9 Help taxpayers understand and claim appropriate credits and deductions:</b> Taxpayers, including individuals and small businesses, will receive education and assistance in claiming available incentives</p>
<p><b>1.2 Expand digital services and digitalization:</b> Taxpayers will be able to file all documents securely and exchange correspondence electronically</p>	<p><b>1.6 Enable taxpayers to access their data:</b> Taxpayers will be able to access, download, and seamlessly share their tax data and IRS history</p>	<p><b>1.10 Make payments easy:</b> Taxpayers will be able to make payments more easily and seamlessly through all service channels</p>
<p><b>1.3 Ensure employees have the right tools:</b> Employees will have the right tools and information to quickly and effectively meet the needs of taxpayers</p>	<p><b>1.7 Provide earlier legal certainty:</b> Taxpayers will have greater upfront clarity and certainty additional guidance on tax issues</p>	<p><b>1.11 Build status-tracking tools for taxpayers:</b> Taxpayers will be able to use new status-tracking tools to see real-time status updates, next steps, and estimated time to process documents and resolve issues</p>
<p><b>1.4 Improve self-service options:</b> Taxpayers will have access to secure online accounts where they can view their account and profile information, make changes, interact with the IRS, and manage preferences for payments, refunds, and communications</p>	<p><b>1.8 Deliver proactive alerts:</b> Taxpayers will be able to receive alerts to help them meet filing and payment obligations, understand opportunities to claim certain incentives and learn about life changes that could impact their taxes</p>	<p><b>1.12 Streamline multichannel customer assistance:</b> Taxpayers will be able to quickly, securely and accessibly get the help they need, resolve more issues in a single contact, and experience minimal delays during interactions with us</p>

# Initiatives in Objective 2 on Resolving Taxpayer Issues

## Objective 2 Quickly resolve taxpayer issues when they arise

- 2.1 Identify issues during filing:** The IRS will send taxpayers notifications about potential issues as they file returns to help them correct errors and claim credits and deductions
- 2.2 Deliver early and appropriate treatments for issues:** The IRS will provide taxpayers with timely and tailored post-filing treatments to resolve issues and omissions on their tax returns
- 2.3 Develop taxpayer-centric notices:** The IRS will send taxpayers notices they can understand, delivered in ways they prefer, with clear explanations of issues and steps to resolution
- 2.4 Expand tax certainty and issue resolution programs:** Taxpayers will be able to resolve potential compliance issues up front through expanded pre-filing and tax certainty programs
- 2.5 Offer proactive debt resolution:** The IRS will proactively offer taxpayers appropriate options for past-due payment resolution
- 2.6 Expand engagement with non-filers:** The IRS will provide early, tailored outreach to taxpayers who do not file on time
- 2.7 Use improved data and analytics to tailor timely collections contacts:** The IRS will provide early, tailored contacts to all taxpayers with past-due balances, and will only escalate to more intensive treatments when appropriate

# Initiatives in Objective 3 on Expanded Enforcement

## Objective 3 Focus expanded enforcement on taxpayers with complex tax filings and high-dollar noncompliance to address the tax gap

- 3.1 Employ centralized, analytics-driven, risk-based methods to aid in the selection of compliance cases:** The IRS will use improved analytics to aid in the selection of cases predicted to be at risk of noncompliance, choosing enforcement treatments that maximize opportunities to improve and sustain taxpayer compliance while ensuring fairness in selection
- 3.2 Expand enforcement for large corporations:** The IRS will increase enforcement activities to help ensure tax compliance of large corporate taxpayers
- 3.3 Expand enforcement for large partnerships:** The IRS will increase enforcement activities to help ensure tax compliance of large partnerships
- 3.4 Expand enforcement for high-income and high-wealth individuals:** The IRS will increase enforcement activities to help ensure tax compliance of high-income and high-wealth individuals
- 3.5 Expand enforcement in areas where audit coverage has declined to levels that erode voluntary compliance:** The IRS will increase enforcement activities in other key areas where audit coverage has declined while complying with Treasury's directive not to increase audit rates relative to historical levels for small businesses and households earning \$400,000 per year or less
- 3.6 Pursue appropriate enforcement for complex, high-risk and emerging issues:** The IRS will enhance detection of noncompliance and increase enforcement activities for complex, high-risk, and novel emerging issues, including digital assets, listed transactions and certain international issues
- 3.7 Promote fairness in enforcement activities:** The IRS will help promote fairness for all taxpayers by addressing noncompliance appropriately in a balanced manner



# Initiatives in Objective 4 on Modern Tech

**Objective 4** Deliver cutting-edge technology, data, and analytics to operate more effectively

- 4.1 Transform core account data and processing:** The IRS will modernize the systems used to access and process taxpayer data
- 4.2 Accelerate technology delivery:** The IRS will deliver faster and better results by accelerating design, development and delivery of user-centered technology by shifting to a “product and platform” operating model that incorporates business and technology perspectives
- 4.3 Improve technology operations:** The IRS will enhance core technology processes and platforms to support the delivery of expanded capabilities for taxpayers and employees
- 4.4 Continue to ensure data security:** The IRS will continue to protect taxpayer data and IRS systems from cyber threats as we transform
- 4.5 Maximize data utility:** The IRS will improve the storage and management of data to support improved taxpayer services and enforcement
- 4.6 Apply enhanced analytics capabilities to improve tax administration:** IRS employees will use data and insights to enhance delivery of tax administration and improve the taxpayer experience
- 4.7 Strategically use data to improve tax administration:** The IRS will use enhanced data and explore additional innovative analytic techniques to improve strategic planning, decision-making and compliance measurement
- 4.8 Partner to expand insights:** The IRS will engage with external partners to develop new insights to generate value for taxpayers and policymakers

# Initiatives in Objective 5 on Workforce

**Objective 5** Attract, retain, and empower a highly skilled, diverse workforce and develop a culture that is better equipped to deliver results for taxpayers

- 5.1 Redesign hiring and onboarding:** The IRS will implement fast, streamlined hiring processes that address challenges known today, use data to match candidates to the right jobs, and deliver more effective onboarding programs
- 5.2 Attract a talented and diverse workforce:** The IRS will build new talent pipelines and attract a workforce that reflects the diversity of the people we serve
- 5.3 Improve the employee experience:** The IRS will improve the employee experience by offering more flexibility, building a more collaborative team culture, and better equipping personnel
- 5.4 Help employees grow and develop:** The IRS will deliver growth and learning opportunities by developing attractive career pathways for all employees, integrating training and skill-building, and better equipping managers to lead high-performing teams
- 5.5 Develop a data-savvy workforce:** The IRS will create hiring and training programs to build a data-savvy workforce that uses the improved data environment to serve taxpayers and meet mission goals more effectively
- 5.6 Elevate workforce planning strategy:** The IRS will leverage workforce planning best practices to forecast and meet hiring demand more effectively to avoid disruption and satisfy business needs
- 5.7 Improve organizational structures and governance:** The IRS will implement new organizational structures and distributed and transparent decision processes to support more collaborative, effective and efficient tax administration
- 5.8 Build a culture of service and continuous improvement:** The IRS will build a customer-centric culture by empowering employees and leaders to put the customer first and rewarding outstanding service



Note: Where the SOP Initiative column shows 1, 2, 3, 4 or 5 rather than, for example, 1.7, it means that the recommendation does not fit precisely within an initiative but does fit within an SOP objective (see list above from the SOP report).

ID#	ISSUE	RECOMMENDATIONS	SOP INITIATIVE
2024-GEN-1	IRS Funding	<p>1. Find opportunities to educate the public about the scope of the tax gap and the manner in which enforcement and taxpayer service activities improve our nation’s financial health and support fairness in tax administration. Such distribution opportunities exist in social media postings, information included in form instructions and publications, fact sheets, and other avenues. Use common language and emphasize that the tax gap refers to “taxes owed” and that the unpaid taxes are owed to our nation collectively (“our tax gap”) to help convey to the public that the tax gap is relevant to them and a topic about which they should care deeply. Along with conveying the size of the tax gap and the importance of the issue, also actively seek opportunities to communicate that the additional funding provided by the Inflation Reduction Act of 2022 is more than paying for itself by helping the IRS collect more unpaid tax owed the treasury than the agency is receiving in funding. The IRS should also be transparent in noting that compliance audits of large and complex returns can take years to conduct, and that the payoff from these activities may not be fully realized for a number of years due to lengthy audits possibly followed by appeals and litigation.</p> <p>2. Explain to the public that the IRS budget for enforcement and taxpayer services includes many activities beyond audits and forced collection. The enforcement budget also includes everything from reminding taxpayers to file their returns or pay their balance due,</p>	All

		<p>setting up payment plans with taxpayers who cannot pay their balance due when they file their tax return, and protecting the federal treasury from fraudulent refund claims using stolen identities. While the enforcement budget is a large component of IRS funding overall, many of the activities funded under that budget line item are not what the public thinks of when they hear the term “enforcement.”</p> <p>3. Develop a single webpage to help the public understand the tax gap, and use charts, graphs, and other visual aids to help readers understand the tax gap and IRS efforts to reduce it. At present, the IRS has two different pages addressing the topic, a statistics page with data that includes the most recent tax gap data that is available, and a newsroom page that contains no information after the 2014-2016 tax gap estimate.</p> <p>A single, well-maintained web page devoted to the tax gap that uses charts, graphs, and illustrations to present the information in a visually interesting manner would help to engage the public. Also, efforts to help readers understand the scale of the tax gap could be helpful; for example, the 2021 tax gap of \$688 billion exceeded all corporate income tax collections in 2022, which totaled \$425 billion.</p> <p>By taking the lead as a reliable source of tax gap data that is presented in a format accessible to the public, the IRS can become the trusted source for information about the tax gap and perhaps dispel some of the misleading information disseminated by the agency’s detractors. Highlighting significant successes in closing the tax gap and pairing those successes with funding made available by the IRA would bolster the public’s support for IRS funding initiatives in the future.</p>	
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		<p>4. Develop a calculation methodology for corporate income tax nonfilers, estate/trust nonfilers, and tax-exempt nonfiling of unrelated business tax and include these data in the estimation of the tax gap. While the IRS includes income tax for individuals and corporations, employment taxes, and estate tax in its estimation of the tax gap, it has not included corporate income tax nonfilers, nonfilers of income tax returns for estates and trusts (Form 1041), and income tax owed by tax-exempt entities in its estimates. The omission of these nonfilers from estimates of the tax gap may create an impression that corporations, estates, trusts and tax-exempt entities contribute nothing to the nonfiler tax gap when it is impossible to know that in the absence of data. Including those nonfilers in tax gap estimates would provide a more accurate estimate of the tax gap and would also assure taxpayers that the IRS fairly seeks to enforce the tax law for all types of taxpayers.</p>	
2024-GEN-2	Strategic Operating Plan (SOP) Assessment and Analysis	<p>1. Provide more details in a format accessible for the public on how the IRS is carrying out the SOP including the planning and assessment measures applied to reach the goals for an improved tax agency, modernized and responsive taxpayer services, and more effective enforcement activities. This information could be added to the Form 1040 instructions, released as a Fact Sheet, posted in small segments on social media, and in interviews of senior IRS officials with news outlets.</p>	All
		<p>2. Add measurable objectives to the SOP initiatives where appropriate, as illustrated in this report (above) for Initiative 2.6, to increase transparency and efficiency of the SOP.</p>	All

		<p>3. Broaden digitalization efforts to include the following:</p> <ul style="list-style-type: none"> <li>a. Identify all IRC provisions that require mailing or use of paper documents and share this list with Congress noting the changes needed to allow for solely digital interactions between the IRS and taxpayers. Without law changes to expand distribution to include digital means such as posting in a taxpayer's online account with email notification, the IRS will not be able to achieve its goals to allow any taxpayer to interact completely digitally with the IRS.</li> <li>b. Ensure that online tools including websites such as Interactive Tax Assistants, are current and regularly tested by IRS personnel and taxpayers to ensure they are helpful.</li> <li>c. Review all filing processes to ensure there is a digital element. For example, taxpayers using Free File and Direct File should also be able to use these tools to file an amended return. All tax forms should allow for e-filing.</li> <li>d. Pursue digital capability and allowance in tax matters involving issuers of information returns and recipients to better enable taxpayers to engage digitally for all tax functions. For example, the Information Returns Intake System (IRIS) system should be enhanced to have the information filed with the IRS also go directly to the recipients' online accounts. In addition, all information returns should be accessible on the taxpayer's transcript promptly after receipt by the IRS.</li> <li>e. Work with other federal agencies to provide universal access to broadband and related technology for all Americans via free or low-cost avenues.</li> </ul>	All
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		<p>5. Expand the SOP to specifically address the needs of U.S. taxpayers living abroad. Possible avenues for additional services include operation of Volunteer Income Tax Assistance (VITA) Program sites at U.S. embassies in countries with a large number of U.S. taxpayers, as well as operation of virtual VITA sites. The IRS Tax Outreach, Partnership and Education (TOPE) group should be funded to find and partner with organizations outside of the U.S. that can help in outreaching to citizens living abroad.</p>	All
		<p>6. Expand the SOP to include more specific items involving return preparers (beyond preparer online accounts), such as to address preparer issues presented elsewhere in this report (PTIN management (General Issue 10); oversight efforts to encourage more practitioners to pursue competency standards, engage in continuing education and have limited practice rights (General Issue 11); and practice management education for Enrolled</p>	All

		Agents (General Issue 12)). Updating Circular 230 should be a priority as relevant to these recommendations and to address areas that are out of date such as the section on registered tax return preparers.	
		7. Expand the description of Initiative 4.4 on data security to include a specific goal to reduce the time in resolving tax-related identity theft issues and be specific that the IRS continues to work on finding ways to reduce the chances of tax-related identity theft (we realize that specifics cannot be disclosed on this but stating that such plans are part of data security goals would be useful for stakeholders to know).	4.4
		8. Expand activities under SOP Initiative 1.7 on earlier legal certainty to include study of the impact of the <i>Loper Bright</i> and <i>Corner Post</i> decisions and keeping the public informed of any changes in the IRS guidance process in light of these decisions.	1.7
2024-GEN-3	Reporting of Level of Service (LOS) Data	1. Provide more details in a format accessible for the public on how the IRS is carrying out the SOP including the planning and assessment measures applied to reach the goals for an improved tax agency, modernized and responsive taxpayer services, and more effective enforcement activities. This information could be added to the Form 1040 instructions, released as a Fact Sheet, posted in small segments on social media, and in interviews of senior IRS officials with news outlets.	1 4.7
		2. Introduce two subsidiary metrics of the LOS, one for calls answered by a Customer Service Representative (CSR) and another for calls re-routed to an automated response.	1 4.7
		3. Explore a new metric that accommodates all service channels that existed.	1 4.7

		4. Continue efforts in response to both NTA and TIGTA recommendations to create a new, forward-looking metric that includes issue resolution – specifically, whether the taxpayer successfully accomplished what they intended by contacting the IRS for assistance.	1 4.7
2024- GEN-4	Hiring	1. <i>Provide key, engaging highlights in every job posting using understandable terminology:</i> While there likely are standards for posting federal government jobs, the IRS should use its own jobs and careers website ( <a href="https://irs.usajobs.gov/">https://irs.usajobs.gov/</a> ) to provide more details that help potential applicants better understand the nature of the work for every career category and the full package of benefits and the salary structure in various cities and grade levels. Publicity about careers at the IRS should highlight unique features, such as a 40-hour work week for accountants.	5
		2. <i>Hire part-time and flexible schedule employees where appropriate:</i> Hiring part-time and flexible schedule employees for certain positions, particularly for in-person or evening/weekend hours may help in being able to better staff Taxpayer Assistance Centers (TACs) for hours that will better serve more taxpayers. Other positions at the IRS might also be conducive to hiring well-qualified part-time and flexible schedule employees who are not able to work 40 hours per week or who seek to supplement their salary earned elsewhere.	5
		3. <i>Create materials to ensure VITA, TCE and LITC volunteers know of career opportunities at the IRS:</i> These volunteers represent an excellent group of individuals with tax knowledge, skills, and understanding of some IRS procedures, yet likely have little understanding of career options at the IRS. Information, including personalized	5

		communications, should be provided to these volunteers.	
2024-GEN-5	Online Accounts Promotion	<p>To increase adoption of the various online accounts enabled by the IRS should develop and implement a marketing plan focused on making taxpayers and tax professionals aware of the availability and advantages of online accounts. Examples of approaches to increase awareness and adoption of online accounts include:</p> <ol style="list-style-type: none"> <li>7. Active promotion – direct mail, radio or television advertising including its current social media efforts.</li> <li>8. Working with professionals and professional associations (providing a handout, tent cards or materials that can be printed and voluntarily distributed).</li> <li>9. Provide reports to professionals on the number of their clients who have online accounts.</li> <li>10. Add the requirement that tax professionals have a Tax Pro account to continue promoting themselves as Authorized IRS e-file Providers.</li> <li>11. Run a promotion with tax preparers – for example, offering discounted admission to an IRS Nationwide Tax Forum if the preparer signs up a certain number of clients as online account holders.</li> <li>12. Offer discounts on an IRS Nationwide Tax Forum registration fee if the tax professional has a Tax Pro account.</li> </ol>	<p>1.2 1.4 1.6 1.8 1.10 1.11 1.12 4</p>
2024-GEN-6	Online Accounts Technical Support	<ol style="list-style-type: none"> <li>1. Add features and capabilities to the IRS Online Accounts roadmap that reflect industry best practices in customer service and technical support, many of which are noted in this report.</li> </ol>	<p>1.2 1.4 1.6 1.8 1.10 1.11 1.12 4</p>



		2. Allocate funding for online account technical support staffing as warranted, accounting for growth in account usage and as functionality increases.	1.2 1.4 1.6 1.8 1.10 1.11 1.12 4
2024-GEN-7	Capabilities for Business Online Tax Accounts	See General Report #7 for listing of specific recommendations within the categories of top priority (10), high priority (7), medium priority (24), and low priority (but still important) (12).	1.2 1.4 1.6 1.8 1.10 1.11 1.12 4
2024-GEN-8	Authorization Techniques to Enable Businesses to Utilize Online Accounts	<p>1. Authorize the same individual(s) who are authorized to sign the income tax return for any entity type (or would be so authorized if the entity filed an income tax return) to act as the initial “designated official” (“DO”) for the entity.</p> <p>2. If Recommendation 1 is not adopted, ensure that the ultimate authorization approach does not restrict the authorized individuals such that, as a practical matter, an entity will be unable to utilize a BTA.</p> <p>3. Simplify the process for identifying and authenticating the DO: Where an entity or one of its consolidated group members or wholly owned disregarded entities has employees who are authorized to sign the income tax return for the entity, the DO should be one of those employees and should be verified through payroll information on file with the IRS. In other cases, the IRSAC believes it is appropriate to have a two-step process to authenticate the initial DO:</p> <p>1) The DO, after authenticating with ID.me, would verify information from an income tax filing, such as the amount of adjusted gross income or estimated taxes paid from a previously filed income tax return by</p>	1.2 1.4 1.6 1.8 1.10 1.11 1.12 4

		<p>the entity (or its consolidated parent) and they certify that are authorized to sign the income tax return for the entity (or would be so authorized if the entity could file a separate income tax return); and</p> <p>2) If the DO verifies this information correctly, the IRS would then mail a “DO PIN” to the address on file from the last income tax return to entity. The DO would have 30 days from the date that PIN is mailed to enter this PIN to verify their status before they could act as a DO for that entity.</p> <p>4. Streamline the authorization process and consider the following:</p> <ul style="list-style-type: none"> <li>a. Update the process of receiving an EIN online to permit entities to identify one or more DOs in connection with receiving an EIN.</li> <li>b. Avoid any action to independently verify the authorization of an individual identified by an entity as a DO or DU by reviewing legal documents of the entity.</li> <li>c. Each DO should be provided full authority to take any action permitted on a BTA, including the ability to authorize or deauthorize other DOs or DUs.</li> <li>d. DOs should be able to authorize DUs to access information and/or take actions on an individual BTA function by function basis (i.e., for each action, a DO should be able to tick a box as to whether the DU can utilize that feature or, with respect to accessing information, access that information).</li> <li>e. Do not require periodic revalidation or reauthorization of a DO or DU. If the IRS determines it must do so, the revalidation or reauthorization should be as infrequent as possible and require a minimum amount of a DO’s time.</li> </ul>	
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2024-GEN-9	Identity Theft Prevention and Resolution	<ol style="list-style-type: none"> <li>1. Improvements to Combat Tax-Related Identity Theft and Return Fraud <ul style="list-style-type: none"> <li>a. Ensure that the IRS's written identity theft plan is on par with (or exceeds) the plans adopted by certain financial institutions required by law to keep such a plan and, in connection therewith, publish the research and analysis supporting the apparent conclusion that the IRS's specific implementation of IAL2 would allow the IRS to offer similar data security features to that offered by industry as it relates to identity assurance, authentication, detecting compromised account, etc.</li> <li>b. Use the existing IAL2-verified IRS Online Account to authenticate self-prepared electronically filed tax returns. This is already part of Direct File and should be extended to third-party tax software through an API or token that links the transmitted return with the IRS Online Account, to reduce tax-related identity theft and stolen identity refund fraud.</li> <li>c. To thwart unscrupulous tax return preparers' attempts to</li> </ul> </li> </ol>	4.4

		<p>electronically file tax returns without a PTIN and EFIN, which hampers detection of identity theft and fraudulent returns, partner with the tax software industry to mark returns suspected of being prepared by a paid preparer and falsely submitted as self-prepared returns using consumer tax software.</p> <p>d. Develop additional methods of screening tax refund deposits in order to increase fraudulent refund detection.</p>	
		<p>2. Improvements to Assist Victims of Tax-Related Identity Theft and Return Fraud</p> <p>a. Update the Identity Theft Landing Page to include information about reporting unscrupulous tax return preparers and/or suspected identity thieves to the appropriate operating divisions within the IRS (<i>i.e.</i>, IRS Criminal Investigation, the Office of Professional Responsibility, or the IRS Whistleblower Office). For example, the IRS might include on the Identity Theft Landing Page a link to Form 3949-A, which could be used to allow identity theft victims to provide information to the IRS about suspected identity thieves.</p> <p>b. Assess appropriate civil and criminal penalties against those determined to have committed identity theft; and report these results in the annual IRS Data Book.</p> <p>c. Clear the backlog and prevent future backlogs of tax-related identity theft affidavits by (1) assigning a dedicated detail immediately to work on ID theft affidavits until the backlog is cleared, (2) immediately assigning an IP PIN and flagging pending tax returns as suspected of identity theft upon receipt of an identity theft affidavit, and (3) re-</p>	<p>4.4</p>

		<p>allocating future personnel and financial resources from other divisions to work on tax-related identity theft, and factor in projected growth of identity theft cases to inform the re-allocation.</p> <p>d. Reduce the number of Forms 14039 filed that involve identity theft, but not tax-related identity theft, by modifying Form 14039 to state at the top that the affidavit is for victims of <u>tax</u> identity theft and recommending that others obtain an IP PIN and only file the form later if there is tax-related identity theft.</p>	
2024-GEN-10	PTIN Database and Renewal System	1. Deactivate and archive all PTINS that have not been renewed for the last three years and do not allow those PTINS to be used on tax returns.	None
		2. Match the preparer name and PTIN on tax returns prior to initiating income tax refunds to taxpayers. If the preparer name and PTIN do not match, notify the preparer when possible, to determine if the PTIN is incorrect due to data input or to determine fraudulent use. Verify the taxpayer by other means to authenticate a valid tax return, such as prior year adjusted gross income, W-2 matching, 1099-Rs or other independent means to allow tax return to be processed.	None
		3. Make the PTIN application and renewal process accessible through the Tax Pro Account to allow tax practitioners a one stop location to access IRS online services.	None
		4. Publicize the procedure for tax practitioners to deactivate their PTINs such as on the PTIN home page where it can be easily found. In the annual email notice that PTIN renewal is available, include a reminder for PTIN holders to deactivate their PTIN if they are no longer preparing tax returns.	None

		5. Require software vendors to validate PTINs used in their systems in the same manner as they currently validate EFINs.	None
		6. Add a late fee to all annual PTIN renewals after December 31 to encourage timely renewals prior to the filing season.	None
		7. Use the renewal email and the PTIN website for focused messaging such as participating in the Annual Filing Season Program, attending IRS Nationwide Tax Forums and IRS webinars for tax professionals, or signing up for e-News subscriptions.	None
		8. Enable a tax professional's PTIN account to show not only how many Forms 1040 were filed under that PTIN but also other returns including Forms 706, 709, 990, 1041, 1065, 1120 and 1120-S.	None
2024- GEN- 11	Oversight of Return Preparers	1. Modify Circular 230 to include a voluntary Filing Season Agent credential modeled off the Enrolled Agent credential, including minimum competency, continuing education, and ethical standard components. Filing Season Agents would be required to: <ul style="list-style-type: none"> <li>a. Demonstrate competence by passing Parts 1 and 3 of the Enrolled Agent examination.</li> <li>b. Pass suitability checks and maintain a PTIN.</li> <li>c. Complete 60 hours of continuing education under a three-year renewal cycle with a minimum of 15 hours per year with two hours being ethics education.</li> </ul>	None
		2. Phaseout the AFSP program and reallocate program resources to the voluntary Filing Season Agent program. Transition existing AFSP participants to the new program.	None
		3. Increase participation by waiving the SEE Part 1 requirement for applicants who currently participate in the AFSP	None

		program with an exemption from completing the AFSP course.	
		4. Continue to promote the Enrolled Agent program and highlight that like CPAs and attorneys, Enrolled Agents have more practice rights before the IRS than do Filing Season Agents, including representing taxpayers regarding any type of tax return, even if they did not prepare their return.	None
		5. Research and publish results regarding accuracy rates among AFSP record holders, uncredentialed preparers, and preparers otherwise exempt from AFSP test requirements (such as preparers subject to state requirements California, Maryland and Oregon) to determine the impact of minimum competency and continuing education requirements on tax administration.	None
2024-GEN-12	Broaden Continuing Education for Enrolled Agents to Include Practice Management Topics	Modify Sections 10.6(e)(2) and (f) of Circular 230 to allow up to four hours of practice management as an option within the 72 hours required to renew enrollment for Enrolled Agents. Practice management should be broadly defined as it is for CPAs to include business organization, communications, marketing, computer software and applications, information technology, elimination of bias, privacy laws, and personnel/human resources.	None
2024-GEN-13	Process for Issuing New and Revised Forms and Obtaining Comments	1. <i>Clarify and publicize the comment process for new and revised forms and instructions and make it simple to submit comments with such comments publicly available:</i> The IRS should create a website that explains the process the IRS is required to follow in releasing new and revised forms, as well as the requirement to obtain approval every three years for continuing forms. This website should also explain how and when to submit comments on these forms (including when there is no Paperwork Reduction	None

		<p>Act Federal Register announcement, but a person has suggestions for any tax form). This website should also remind readers that draft instructions are usually released after the draft form and that readers are encouraged to also comment on these drafts. If possible, there should be only one location/address for submitting comments (such as a website) and if a single location is not possible (such as due to PRA requirements), commenters should clearly be informed when they need to submit comments to multiple recipients or websites. Commenters should always have the option to either enter comments into a comment box or upload a document with their comments (or mail the comments to an address that is easy to find in the submission instructions). Similar to comments submitted on IRS notices or proposed regulations, the comments submitted for draft forms should be available to the public on a website such as Regulations.gov.</p>	
		<p><i>2. Provide ready and timely access to new and revised draft forms:</i> Draft forms should be posted to the IRS Draft Tax Forms website and that URL should be included in the Federal Register announcement about new forms. All forms at this website should be readily downloadable in the same manner (none should provide a message about the need to download software for access).</p>	None
		<p><i>3. Reopen the comment period when the instructions to a new or revised form are released if they were not released at the same time as the draft form was released.</i> This will better ensure that comments on the new or revised form are complete and comprehensive because lines and boxes on new and revised forms may not be understandable without the instructions. If this is not possible for comments on new and revised draft</p>	None



		forms due to PRA rules, provide an explanation on a website (see Recommendation 1 above) about what happens with comments on draft instructions to new and revised tax forms. Issuance of draft instructions early in the 60-day comment period would be helpful to commenters.	
		4. <i>Widely announce the opportunity to comment on new and revised forms and their instructions:</i> In addition to the required Paperwork Reduction Act posting in the Federal Register, the release of new and significantly revised forms should also be announced in an IRS news release (IR) which can include the Federal Register link, a link to the draft form, and instructions on how to submit comments as well as the due date. This news release should also refer readers to the IRS website about the IRS and PRA requirements for releasing draft forms and obtaining comments on them (see Recommendation 1 above).	None
2024-IR-1	Worker Classification Clarifications Needed Due to New Department of Labor (DOL) Test	1. Work with the DOL to define who is an employee and who is an independent contractor to eliminate any ambiguity and confusion for employers and individuals. Providing a guide to the differences would be helpful to employers and workers.	1.7 1.9
		2. Work within the definitions established by the DOL to eliminate gaps and create clarity to prevent misclassification of workers and risk of employer penalties.	1.7 1.9
		3. Working with the Department of Treasury, work with lawmakers to adopt the following recommendations outlined in the 2017 Treasury Greenbook: a. Permit the IRS to require prospective reclassification of workers who are currently misclassified and whose reclassification has been prohibited under current law. b. Permit the IRS to issue generally applicable guidance on the proper	1.7 1.9

		<p>classification of workers under common law standards.</p> <p>c. Require service recipients to give notice that explains how workers will be classified and the consequences thereof to independent contractors including tax implications.</p> <p>d. Permit the IRS to disclose to the DOL about service recipients whose workers are reclassified.</p> <p>Adopting these recommendations would allow the IRS to instruct and direct individuals and companies where to locate resources to understand their tax liability, aid individuals that lack resources and knowledge of the tax law to prevent under-payment and under-reporting.</p>	
2024-IR-2	SECURE Act Request for Certain IRA Tax Reporting Guidance	1. Add to the Priority Guidance Plan a project to update current guidance otherwise found in IRS Notice 2005-92 allowing an IRA custodian to rely on reasonable representations by the distributee that a distribution is subject to an exception under Section 72(t)(2)(M) for reporting as (2) Early distribution: exception applies.	1.7
		2. Expressly allow IRA custodians to accept repayments of distributions permitted to be repaid under Section 72(t) based on a statement by the IRA owner, preferably as a checkbox on a contribution form, that requirements for repayment or recontribution are satisfied.	1.7 1.9
		3. Allow a checkbox or statement from the IRA owner in situations where a statement or other reasonable representation is permitted to indicate the nature of a distribution or repayment. Also provide model language for the checkbox or statement for IRA custodians to use in practice.	1.7 1.9
		4. Continue, at least in the short term, to allow the industry to apply repayment code "BA" for all repayments that until final publication of form instructions have	1.7 1.9

		<p>not benefited from a distinct repayment code for use on Form 5498. IRA custodians have been accepting repayments in 2024 with no knowledge that the IRS would publish distinct codes and now months after those transactions occurred, cannot now determine what repayment code should be applied, as that information should be gathered when a repayment occurs. Where the IRS is providing new repayment codes to apply to repayments of distributions under 72(t)(2), allow IRA custodians ample time to update processes and systems to support these new codes, and for IRA custodians to apply their best efforts to implement these codes on future Forms 5498 without fear of penalty for incorrect information reporting until systems may reasonably be updated.</p>	
		<p>5. Clarify, especially for taxpayer benefit, whether distributions that are not subject to the additional tax described in Section 72(t)(1) might be repaid according to the instructions of Section 72(t)(2). These distributions include for example, those taken by an account owner who is older than 59½ or taken from a Roth account.</p>	1.9
2024-IR-3	SECURE 2.0 Act Qualified Tuition Program Transfer to Roth IRA	<p>1. Provide official guidance via revenue procedures regarding any considerations that the 529 QTP administrator must apply to evaluating the specific qualification requirements. This includes for example, how to determine whether the plan has been in existence for the minimum 15 years, considering for example that the beneficiary of a QTP may change under Section 529(c)(3)(C), and whether the QTP plays a role in ensuring the lifetime limit of \$35,000 is not exceeded.</p>	1.7
		<p>2. Provide official guidance via revenue procedures that confirms that the role of the Roth IRA custodian is limited to ensuring the annual contribution limits for the IRA plan described in Section</p>	1.7

		219(b)(5) are not exceeded, that the funds are received as a direct rollover, and that information reporting for these transactions occurs on Form 5498.	
		3. Provide guidance regarding content and intended use of the reporting provided by the 529 QTP administrator to the Roth IRA trustee as required under Section 529(d)(2).	1.7
2024-IR-4	Businesses Need Support from IRS Large Corporation Representatives	1. Examine and address barriers preventing Large Corporate technicians from adhering to service level response times to improve resolution of taxpayer issues and to prevent new and unnecessary issues from arising.	1 1.1 1.3 2 2.2
		2. Create a publication with information on how to determine if your company is eligible for the program, how to identify your technician, what can be addressed with your technician and procedures and expectations of both the IRS and taxpayer for engaging in the program. Such publication should include information about: a. How to obtain copies of 941, 945 or 1042 transcripts, ideally for multiple EINs at the same time. b. How to request a 60-day hold on a penalty when a taxpayer-dispute or inquiry has been submitted and a balance is due. c. Obtaining status of outstanding Failure to Deposit penalties including providing CP568 (detailed report of how the IRS applied payments and liabilities) etc. d. Status of Notice 972CG, Notice of Proposed Civil Penalty and other related information reporting penalty processes, including whether any reasonable cause abatement request is received and under consideration by the IRS.	1 1.1 1.3 2 2.2
2024-IR-5	Form 15397, Application for Extension of Time to	1. Add Form 15397 in the FIRE and IRIS systems as an alternate option for issuers to submit the form.	1 1.7

	Furnish Recipient Statements, Needs Updating	2. Update the instructions for Form 15397, the General Instructions for Certain Information Returns (2024) publication, and all other applicable publications and forms with information about whether extension requests will be approved or denied, and the method by which such communications will be provided. If this action is not taken, remove or clarify any references to "...approved extensions..." in the Form 15397 instructions and the General Instructions for Certain Information Returns (2024) publication.	1 1.7
2024-IR-6	Electronic Recipient Statement for Form 1099-DA, Digital Asset Proceeds From Broker Transactions	1. Provide guidance to allow brokers who facilitate trades of digital assets through electronic means, such as a smartphone, tablet, computer, or similar technology, to furnish written statements to a recipient electronically without requiring the recipient to first consent separately to receive such statements electronically. Taxpayers have demonstrated they have the means to access information return statements electronically because they conduct all their transactions and receive current communications electronically from the digital asset broker. These two factors combine to satisfy the requirements of IRS Publication 1179 for electronic delivery of Forms 1099-DA, based on P.L. 107-147. Update Publication 1179 to reflect that separate consent is not required to be obtained from the recipient for the provision of electronic versions of Form 1099-DA.	1.2 1.6
		2. Consider opportunities, such as aggregated statement reporting, to reduce the number of Forms 1099-DA that must be issued. The current burden estimates do not factor in the high cost and environmental impact of printing and mailing up to eight billion Forms 1099-DA. This action should be taken along with electronic delivery of these forms.	1.2 1.6

2024-IR-7	Streamline E-Filing of Forms 1042	1. Suspend the e-file mandate for U.S. withholding agents to file the Form 1042 return electronically until the IRS creates a simplified filing alternative for the Form 1042 return. Alternatively, grant return filers additional time through an exemption from the requirement to electronically file Form 1042 returns to allow information return filers that are not professional return filer organizations the time needed to make or buy an MeF solution to file the Form 1042, and perform the mandated ATS testing.	1.2 4.1 4.2 4.3
		2. Ensure that the Form 1042 schema is delivered to the organization as described by Publication 4163, through the SOR.	1.2 4.1 4.2 4.3
		3. Develop an IRIS-like interface or fillable form upload to simplify return submission for the Form 1042 return to prevent XML encoding errors and allow forms submission by organizations that choose not to engage a third-party filing provider. A simplified filing interface should also consider the attachments required to accompany the Form 1042 return.	1.2 4.1 4.2 4.3
		4. Provide simplified MeF enrollment and submission instructions intended for the non-tax-technical, non-information-technology professional such as an accounts payable professional that is attempting to enroll in MeF and submit the Form 1042 return. The IRS should update the technical guide with a comprehensive XML example representing a Form 1042 return submission. Alternatively, this example could accompany delivery of the 1042 schema to the organization.	1.2 4.1 4.2 4.3
		5. Minimize the requirement to annually test the ability of an organization to file through MeF where the filing requirement is <i>de minimis</i> , such as where the organization is filing only Forms 1042, or only returns for the organization, in	1.2 4.1 4.2 4.3

		contrast to professional forms filing companies.	
		6. Provide systematic ingestion rules for e-filing that default to accepting rather than refusing to accept returns, only rejecting returns that are impossibly incorrect. Where a return is rejected, provide meaningful feedback to the filer. The feedback should be understandable to a non-technical filer.	1.2 4.1 4.2 4.3
2024-LBI-1	Streamlining LB&I Examination Procedures	1. <i>Evaluate the need for the Acknowledgement of Facts IDR and opportunities for improving the process:</i> The LB&I Examination Process (LEP) should be evaluated to determine the need for the AOF IDR, timelines, training needs, and opportunities to improve the process. Focus of the evaluation of the AOF IDR should be on opportunities to shorten the timeframe of LEP as well as reduce burden on both the IRS and taxpayers.	2.2 2.4
		2. <i>Provide Transition Plans for Changing Exam Team Members:</i> Prior to LB&I exam team members transitioning from an ongoing exam, the transitioning exam team member should review the exam file with the new exam team member(s). Furthermore, the new exam team members along with the transitioning members should discuss the team change with the taxpayer and include in such discussions a transition plan to maintain the exam timeline, ensure consistency in the LEP and reduce burden on both the taxpayer and LB&I exam team.	2.2 2.4
		3. <i>Provide Additional Training on LEP:</i> LB&I should provide additional training to exam teams on LEP focusing on open and forthcoming communication with taxpayers, IDR procedures and substantiation, and timeliness on both the part of the taxpayers and LB&I. Such training should focus on LEP as detailed in IRM 4.46, including open and	2.2 2.4

		transparent dialog before the issuance of an IDR or NOPA, tailoring the IDR to the relevant issue(s) being examined, and working with taxpayers on substantiation.	
		4. <i>Focus on Material Issues:</i> Such focus should include emphasis on issues that were specifically identified in the risk analysis and evaluate whether material issues should focus on permanent items rather than those that reverse or are eliminated over time.	2.2 2.4
2024-LBI-2	Processing of Net Operating Loss Carryback Claims Under the CARES Act of 2020 and Erroneously Rejected Claims	<p>1. <i>Issue Revenue Procedure for Erroneously Rejected Claims:</i></p> <ul style="list-style-type: none"> <li>• The IRS should issue a revenue procedure to address the issue of erroneously rejected NOL carryback claims. This guidance would create a streamlined process for taxpayers to contest rejections related to statute of limitation (SoL) misinterpretations or discrepancies in IRS records. Such a process would eliminate the need for prolonged correspondence and reduce the burden on the TAS.</li> <li>• In addition, the IRS should create a dedicated team within the LB&amp;I Division that is well-versed in NOL carryback claims. This team would be responsible for reviewing disputed claims and ensuring that the SoLs and carryback rules are properly applied. By dedicating knowledgeable personnel to this area, the IRS can avoid repeated errors and improve the resolution of these disputes.</li> </ul>	1
		<p>2. <i>Develop Contingency Plans for Future Processing Surges:</i></p> <ul style="list-style-type: none"> <li>• While the backlog of NOL carryback claims from the CARES Act has largely been resolved, it is crucial that the IRS establishes robust contingency plans to handle future surges in refund requests. These plans should include emergency preparedness strategies, such as</li> </ul>	1



		<p>reallocating resources and rapidly scaling up digital processing capabilities in the event of future economic disruptions or legislative changes that trigger large volumes of refund claims.</p> <ul style="list-style-type: none"> <li>• The IRS should also ensure that customer service representatives and processing staff are cross trained to handle multiple types of claims and refunds, providing flexibility in times of high demand.</li> </ul>	
		<p>3. <i>Enhance Digital Processing Capabilities and Permanently Implement E-Filing:</i></p> <ul style="list-style-type: none"> <li>• To prevent the reliance on paper-based processes that contributed to the delays, the IRS should expedite the development and implementation of permanent e-filing solutions for Forms 1139 and 1120X. By transitioning these forms to a fully digital platform, the IRS can ensure faster processing, reduce errors, and improve transparency.</li> <li>• The IRS should also leverage its existing digital platforms to allow for real-time status updates on NOL carryback claims, enabling taxpayers to track their refund claims more easily and reducing the need for direct correspondence.</li> </ul>	<p>1 4.1</p>
		<p>4. <i>Increase Transparency and Accountability:</i></p> <ul style="list-style-type: none"> <li>• The IRS should establish clear performance metrics to monitor the effectiveness of these changes, particularly in terms of processing times, refund accuracy, and the impact on reducing taxpayer disputes. These metrics should be regularly reported to both internal stakeholders and the public to ensure transparency and accountability.</li> <li>• In addition, the IRS should monitor the financial impact of delayed</li> </ul>	<p>1</p>

		refunds, including interest payments, and use these insights to inform resource allocation and future contingency planning.	
2024-LBI-3	Revising and Expanding the Streamlined Domestic Offshore Procedures	1. <i>Clarify and expand SDOP eligibility:</i> Extend the benefits of the SDOP to individuals without unreported gross income and entities, allowing them to rectify multiple years of international tax non-compliance in a more streamlined and manageable manner. This inclusion would provide more taxpayers with a structured pathway to compliance, reducing the burden of filing numerous amended returns and encouraging voluntary disclosure.	2.4
		2. <i>Revise the Section 965 Reporting Requirement:</i> Modify the current requirement for taxpayers with Section 965 inclusions to file every year since 2017. Instead, require filings for 2017 and the most recent three years, making it more accessible and less burdensome for taxpayers.	2.4
		3. <i>Adjust the Title 26 Miscellaneous Offshore Penalty:</i> Narrow the base of the Title 26 miscellaneous offshore penalty (e.g., by excluding assets that did not produce income) and/or cap the penalty so it does not exceed the penalties that would be assessed under the Delinquent International Information Return Submission Procedures (DIIRSP). Alternatively, allow for reasonable cause waivers and/or penalty relief due to first time abate. This adjustment would make the penalty more equitable and less punitive, aligning it more closely with the actual non-compliance risk, taxpayer ability to pay, and the benefits enjoyed by those eligible for the SFOP.	2.3 2.4

2024-LBI-4	Simplify Reporting for Individuals Electing to be Taxed Under Section 962 at Corporate Rates on Income Inclusions	1. <i>Eliminate the Standalone Statement Requirement:</i> Integrate all information currently required in the standalone statement directly into the new schedules and forms, rather than requiring a separate statement. This would not only ease the burden on taxpayers but also enable the IRS to automate data processing, reducing errors and delays.	1.7
		2. <i>Add a 962 Checkbox on the Expanded Form 8992:</i> Include a checkbox on the first page of Form 8992 for taxpayers to indicate a Section 962 election. This checkbox would help both tax software and the IRS identify and process the election appropriately, redirecting the income to the correct schedules for further calculation.	1.7
		3. <i>Create a New Schedule C on Form 8992 for Deemed Paid Foreign Taxes:</i> Schedule C on the expanded Form 8992 would capture deemed paid foreign taxes (currently Form 1118, Schedules C, D, and E), centralizing all Section 962-related calculations for individual taxpayers. For corporations, this schedule would feed into Form 1118 as necessary.	1.7
		4. <i>Create a New Schedule D on Form 8992 for Simplified Section 962 Calculation:</i> A Schedule D would provide a step-by-step process for calculating the Section 962 tax liability, including Subpart F and GILTI inclusions, tax gross-up, foreign taxes deemed paid, and FTC limitation calculations. The final tax figure would then be transferred directly to the taxpayer's Form 1040.	1.7
		5. <i>Create a New Schedule E on Form 8992 for PTEP Distributions:</i> A Schedule E on Form 8992 would provide a clear framework for tracking and reporting PTEP distributions, detailing 962 PTEP that is excludable, taxable Section 962 PTEP, and other earnings and profits.	1.7

		<p>6. <i>Add Columns to Schedule P of Form 5471 or Require a Separate Schedule P for Section 962 Electors:</i> Either add new columns to Schedule P of Form 5471 to track 962 PTEP and related distributions or require taxpayers making a Section 962 election to complete a separate Schedule P specifically designed for this purpose. This schedule would detail excludable, non-taxable 962 PTEP, as well as the amounts subject to further taxation, ensuring accurate and consistent reporting.</p>	1.7
2024-SBSE-1	Penalties, Defenses to Penalties, and Tools to Resolve Penalties	<p>1. Penalty Administration Generally</p> <p>a. Improve transparency concerning the assessment and abatement of penalties by publishing in the Data Book more specific details concerning the assessment and abatement of commonly asserted penalties (e.g., accuracy-related penalties on account of a substantial understatement of income tax or negligence or disregard of rules or regulations), penalties that are an enforcement priority (e.g., international information return and promoter penalties), and penalties that are (or should be) of interest to taxpayers and practitioners (e.g., reportable transaction penalties under Section 6662A, paid return preparer penalties under Section 6694 or other assessable penalties respecting the preparation of tax returns for others under Section 6695).</p> <p>b. Create a Director of Civil Penalties position, to serve directly under the Chief Tax Compliance Officer, and require that the Director of Civil Penalties have private practice experience so that industry perspective can be brought to the IRS concerning the administration of penalties. Have the Director of Civil</p>	2.2

		<p>Penalties commission an advisory task force that includes IRS employees, private practitioners, academics, and low-income taxpayer clinic practitioners to conduct a study, as was done post-RRA 1998, with respect to the penalty provisions of the Code and focusing on ways the IRS's policies and procedures could be made more consistent.</p>	
		<p>2. Reasonable Cause and the RCA</p> <ul style="list-style-type: none"> <li>a. Work with the U.S. Department of the Treasury to issue proposed, interpretive regulations under Section 6651 and solicit comments from the public as to (among other things) the factors that should be evaluated in determining whether a taxpayer has reasonable cause to excuse a penalty on the ground of failure to timely file, pay, or deposit. At least until those regulations are issued, the IRS should apply the rule of lenity to require IRS employee to liberally apply the reasonable cause exception.</li> <li>b. Consider updating policy statements concerning penalties to reflect developments in the law that have occurred since the last time they were updated which was more than 20 years ago.</li> <li>c. Confirm with the business operating division responsible for the RCA that the RCA incorporates all of the reasons identified in the IRM as constituting a reasonable cause to excuse the failure to timely file, pay, or deposit.</li> <li>d. Recognize a new reasonable cause exception in which reliance on a professional to perform the ministerial act of electronically filing a tax return that the taxpayer signed and authorized to be electronically filed, but which the taxpayer cannot</li> </ul>	<p>2.2</p>

		<p>electronically file, constitutes a reasonable cause to excuse the failure to timely file, pay, or deposit.</p> <p>e. In lieu of adopting a bright-line rule under which reasonable cause cannot exist after a specified number of days, instruct taxpayers to explain in a written statement submitted under penalty of perjury, the facts and circumstances surrounding the late-filing and the corrective steps taken to remedy the noncompliance. In addressing the corrective action, the taxpayer should also explain the reasonableness of the period between the existence of the condition that caused the late-filing and the ultimate filing. For example, a taxpayer might explain the lingering effects of a serious physical injury or mental illness, the additional time needed to engage a competent professional, related complexities associated with the filing of the required return, and the need to liquidate assets to remit payment. Then, after the taxpayer incurs the time and expense of preparing that written statement, signed under penalties of perjury, the IRS should accept the taxpayer's position or assign the issue for review by an auditor who can perform the necessary fact-finding to determine whether reasonable cause exists. Alternatively, to the extent the IRS decides that a bright-line rule is appropriate, the IRS should provide that (1) this factor (<i>i.e.</i>, the time it took for the taxpayer to take corrective action) will weigh in favor of a finding of reasonable cause if a taxpayer takes corrective action within 90 days of being notified of the deficient tax filing, payment, or deposit, and (2) this factor will be neutral as to the</p>	
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		<p>existence of reasonable cause if a taxpayer does not takes corrective action within 90 days of being notified of the deficient tax filing, payment, or deposit.</p> <p>f. Modify documentation instructions: In terms of requiring taxpayers to submit documentation to support the existence of reasonable cause, we believe it is not appropriate for the IRS, through nonbinding, sub-regulatory guidance, to require taxpayers to submit documentation corroborating the existence of reasonable cause because doing so runs the risk of IRS employees elevating substantiation over facts and does not go through the notice and comment process generally required for agency action. We do believe, however, that it is appropriate for the IRM to advise taxpayers that it is typically advisable to include supporting documentation with the required reasonable cause statement. For example, a taxpayer who contends that a serious physical injury or mental illness caused the late filing might be advised to attach to the reasonable cause statement hospital records and/or a letter from a physician, psychiatrist, or psychologist. Similarly, a taxpayer who claims that an incapacitation caused the late filing might be advised to attach any available court records to the reasonable cause statement. Finally, a taxpayer who contends that a casualty or natural disaster caused the late filing might be advised to attach documentation as to the natural disaster or other events that prevented compliance. Such documentation could include copies of police or fire reports, media coverage, insurance claims (and</p>	
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		<p>responses), photos of damages, estimates for work to be performed, and/or receipts for rehabilitative work performed (or supplies purchased).</p> <p>g. Eliminate the heightened standard for reporting of international information return penalties as set forth in the IRM, providing that it is not reasonable or prudent for a taxpayer to have no knowledge of, or to solely rely on others for, the tax treatment of international transactions, and instead adopt the position for all eligible penalties and additions to tax that a taxpayer who relies on the advice of a tax professional may constitute reasonable cause provided that: (1) the advisor was a competent professional who had sufficient expertise to justify reliance; (2) the taxpayer gave the advisor the necessary and accurate information; and (3) the taxpayer actually relied in good faith on the advisor's judgment.</p> <p>h. Modify penalty instructions to employees: While the RCA may lead an IRS employee to a "likely outcome" when dealing with the imposition of a penalty for failure to timely file, pay, or deposit, employees should be encouraged to (1) challenge that indicator when the RCA appears to produce a result that seems unfair to the taxpayer against whom the penalty will be assessed or the American taxpayers more generally, and/or (2) refer that penalty to an examiner to develop the facts necessary to determine if it is, in-fact, an appropriately assessed penalty. This recommendation is in accordance with the IRS's policy statements concerning penalties, which requires IRS employee to "consider the elements of each potentially applicable penalty and</p>	
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		<p>then fully develop the facts to support the application of the penalty, or to establish that the penalty does not apply, when the initial consideration indicates that penalties should apply.”</p>	
		<p>3. FTA  Do not resort to administrative waivers until determining that the statute authorizes a penalty: The IRSAC is concerned by the NTA’s recommendation, and the IRS’s acquiescence, that the FTA be automatically applied to penalties without first evaluating whether the penalty was authorized to be assessed under the statute (<i>i.e.</i>, whether there was actual misconduct the statute penalizes), whether the statute excuses that misconduct (<i>e.g.</i> whether there was reasonable cause for the misconduct), and whether the IRS complied with other procedural provisions of the Code potentially barring the assessment of the tax (<i>e.g.</i>, Section 6751). We encourage the IRS (and the NTA) to not resort to the question of administrative waivers until a determination is made that the Code authorizes the assessment of the penalty. Assuming the IRS will move ahead with automating the FTA, we recommend as follows:</p> <ul style="list-style-type: none"> <li>• Grants of FTA should be communicated in plain English to explain the reasons the taxpayer might want to have an FTA apply (or not apply) to the penalty. The notice should invite taxpayers to submit documents establishing reasonable cause and explaining the benefits of that submission (preservation of the FTA). The IRS should also devote adequate resources to timely address responses that will likely be sent in response to the notice applying the FTA.</li> <li>• Within applicable statutes of</li> </ul>	<p>2.2</p>

		<p>limitation, either (1) there should be no time limit on when application of the FTA can be revoked by the taxpayer, or (2) the time limit on when application of the FTA can be revoked by the taxpayer should be extended to some longer period (e.g., three years or six years). On this point, a taxpayer may not have counsel when the FTA is automatically applied (or the amount of the penalty might be too small to justify having counsel draft a reasonable cause statement or look into the issue). But, when a larger penalty is imposed at a later date, counsel might then get involved, look into the issue, and decide to push back on the IRS for removal of the smaller, earlier penalty because doing so will free-up the FTA for the later, larger penalty.</p>	
2024-SBSE-2	Educating the Public on the Revenue Officer Position	<p>1. Consider changing the official job title of “revenue officer” to “collections officer,” “tax collections officer,” “revenue collections officer,” or some other title that more precisely conveys to taxpayers the duties the employee performs on a regular basis.</p>	2.7
		<p>2. Update Publications 594 and 1660, but not Publication 1, to explain in simple and non-technical terms who a revenue officer is and what are a revenue officer’s responsibilities. Also simplify Publication 594, The IRS Collection Process.</p>	2.7
		<p>3. Use existing tax collections-related letters to educate the taxpayer-addressee about who a revenue officer is, what a revenue officer does, and how a taxpayer should prepare for an appointment with a revenue officer. The letters, which should be written in simple and non-technical terms, should incorporate the items identified in the immediately next paragraph.</p>	2.3 2.7

		<p>4. Create a webpage and publication entitled “What is a Revenue Officer and What Should a Taxpayer Do When Contacted by a Revenue Officer?” (such page, the “Revenue Officer Landing Page”). On the Revenue Officer Landing Page, the IRS should answer in simple terms the following questions: (a) who a revenue officer is (<i>i.e.</i>, an IRS employee in the civil division of the IRS’s collections department); (b) what a revenue officer does (<i>i.e.</i>, collects assessed (recorded) but unpaid tax liabilities and secures required but unfiled tax returns); and (c) how a taxpayer should prepare for an appointment with a revenue officer. As to item (c), the IRS might suggest that a taxpayer can prepare for an appointment with a revenue officer by taking each of the steps laid out in a new publication and website on this topic:. An example of such a publication and website is included at the end of these recommendations.</p>	2.7
		<p>5. Invest in search engine optimization so that the Revenue Officer Landing Page, as opposed to hits from tax resolution firms, receives a top ranking in search engine results.</p>	2.7
		<p>6. Include a quick response (“QR”) code and link to the Revenue Officer Landing Page, on any collection notice issued by a field office (<i>i.e.</i>, all collection notices other than those issued by the automated collection system),</p>	2.3
		<p>7. Revenue officers should always introduce themselves by sending Letter 725-B promptly upon assignment to a taxpayer. Before issuing a Final Collection Notice (<i>e.g.</i>, CP90, Letter 1058, etc.), the revenue officer should document their attempts to contact the taxpayer to solicit payment or unfiled tax returns, answer any questions, and educate the taxpayer about the collection process, taxpayer rights, and the</p>	2.3 2.7

		revenue officer's role in the tax administration process.	
2024-SBSE-3	Disaster Assistance to Improve the Taxpayer Experience	<p>1. Expand Taxpayer Alerts and Assistance:</p> <p>a. Utilize all resources to help disaster victims know of postponed tax actions and disaster tax rules. The IRS Stakeholder Liaisons and the Tax Outreach, Partnership &amp; Education (TOPE) group have connections with many community and practitioner groups who can help distribute information. Be sure to stress with media outlets that the tax information needs to be promoted along with information from FEMA and other relief agencies and organizations.</p> <p>b. Provide the disaster relief news releases to all VITA and TCE sites and Low-Income Tax Clinics in the disaster area.</p> <p>c. Help VITA and TCE sites to remain open until the postponed filing date by asking volunteers as early as possible to do so and helping to secure a new site location if needed (elected officials in the disaster area, libraries and charitable organizations may be able to assist).</p> <p>d. Keep Direct File open for taxpayers in the disaster area through the postponed due date.</p>	1.8
		<p>2. Make Changes to Reduce Filing Errors and Problems That Can Occur With Postponed Due Dates</p> <p>a. When the postponed due date for a disaster is October 15 or later, provide one additional month for individuals (or one less month for partnerships and S corporations), to better ensure that individuals receive Schedules K-1 prior to the due date of their individual income tax return. This matches the current filing due dates which for both the normal and extended due dates are one month</p>	1.8

		<p>shorter for passthrough entities. If it is determined that a legislative change is needed for this relief, we encourage the IRS to work with the Treasury Department and Congress to pursue this change.</p> <ul style="list-style-type: none"> <li>b. When the postponed due date for a disaster is October 15 or later, work with FinCEN to also have the FBAR due date postponed to avoid confusion and provide consistency as many individuals and preparers assume that the FBAR due date was also postponed.</li> <li>c. We encourage the National Taxpayer Advocate and others at the IRS to pursue a legislative change to Section 6511 to allow the postponed due date to also be the extended date to obtain tax credits or refunds (this is the 2024 Purple Book Recommendation #54 discussed earlier in this report).</li> <li>d. Use taxpayer account information to avoid sending a Notice CP14, Notice and Demand, to a taxpayer who has filed their tax return but still has time to make their tax payment.</li> </ul>	
		<p>3. Issue Additional Information and Guidance About Disaster Administrative Tax Relief:</p> <ul style="list-style-type: none"> <li>a. Explain postponement versus extension of dates on the existing websites about disaster relief and include whether disaster victims should also file an extension. While Rev. Proc. 2018-58 is helpful in listing all the postponed time-sensitive acts under Section 7508A, taxpayers and practitioners would greatly benefit in having a list of the acts that are <i>not</i> covered by the postponement.</li> <li>b. Issue a notice or regulations on the tax treatment of employers' leave-based donation programs that apply to all Federally declared disasters. The date for such donations to be</li> </ul>	1.8

		<p>made can be specified as the last day of the year following the disaster declaration.</p> <p>c. Improve the process for requests for additional time to replace property under Section 1033, as allowed by Treas. Reg. § 1.1033(a)-2(c)(3). This process should include that the taxpayer making the request receive acknowledgement of receipt by the IRS within 10 days and an answer to their request within 30 days. These regulations and IRS disaster relief websites and publications should be updated to fully explain how and where requests are to be submitted and the timeline for processing them.</p>	
		<p>4. Add Functionality to Online Accounts to Help Disaster Victims:</p> <p>a. Alerts should be posted in the online accounts of taxpayers with mailing addresses in the disaster area to let them know of the postponement date and IRS disaster resources. Public announcements about disaster relief should include reminders to taxpayers to access their online account for information and provide instructions on how taxpayers can activate their accounts including where they can access such help at nearby IRS or FEMA assistance centers.</p> <p>b. Digitize the process under Treas. Reg. § 1.1033(a)-2(c)(3) to request additional time to replace damaged property under Section 1033. This process should allow taxpayers to submit the request through their online account. It should also provide taxpayers with an acknowledgment that the request was received, when a decision is likely and provide the IRS decision. We also suggest that these time frames be no longer than 30 days to best help disaster victims.</p>	1.8

2024-TEGE-1	Increasing Tax Parity for Tribal Government Issued Tax Exempt Bonds	1. Propose adding a recommendation for the IRS Priority Guidance Plan to update guidance interpreting the essential governmental functions (EGF) standard and support updated guidance through appropriate authorities, including the Department of the Treasury.	None
		2. Issue updated EGF guidance permitting Indian tribes to issue tax exempt financing for economic development customarily permitted for states and local governments, including the categories set out in the 2006 GAO Report.	None
2024-TEGE-2	TEOS and EO BMF Improvements	1. Update documents and data available on both TEOS and EO BMF with a full and complete posting of all documents on a timely basis (at a minimum, monthly) to the extent practicable.	4.2 4.3 4.5
		2. Investigate and implement operational improvements to ensure all available data is uploaded and available on the IRS websites in a timely (at a minimum, monthly) and consistent manner and information posted is a complete representation of the most recent information the IRS has for tax exempt organizations. This should ensure the data actually appears on the IRS webpages timely including contemporaneous updates for name or address changes and short tax years.	4.2 4.3 4.5
		3. Allow for key word searchability for the data available on the TEOS bulk data download webpage.	4.2 4.3 4.5
		4. Organize the EO BMF CSV files by organization name as opposed to state of the organization's incorporation to assist the public in efficiently finding information.	4.2 4.3 4.5
2024-TEGE-3	Improving Communications and Data Sharing Between IRS and Various State Agencies	Identify state-level contacts who are regulating charitable organizations, via NASCO or current state agency contacts and provide the shared information in a flexible manner to account for the varying needs across the state regulators and as	4.5 4.8

		an investigative disclosure under Section 6103(k)(6) of the Internal Revenue Code.	
2024-TEGE-4	Section 401(a) Individually Designed Plans Determination Letter Program	<p>1. Continue to provide plan sponsors with the tools to ensure that their documents are compliant before they file a determination letter request, including:</p> <ul style="list-style-type: none"> <li>• Annual Operational Compliance Lists;</li> <li>• Annual Required Amendments Lists; and</li> <li>• Model language for the required amendments to facilitate plan drafting, e.g., for required amendments under the SECURE Act and SECURE 2.0 Act.</li> </ul> <p>These materials will help to ensure that the plan sponsor adopts all required amendments in a timely manner and that the written plan terms will meet the IRS requirements for compliant plan language.</p>	1.7
		<p>2. Make the following changes to the new electronic submission process for determination letters to facilitate EP's review of the submitted information.</p> <ul style="list-style-type: none"> <li>• Update Form 5300 to include information lines that are specific to required and discretionary amendments, including requiring citations as to where the item is addressed in the plan document(s).</li> <li>• In lieu of providing historical plan documents, allow plan sponsors the option to instead submit a version of the current plan document that is redlined against the prior plan document, allowing EP reviewers to more easily identify where changes have been made. EP reviewers can still request the prior plan documents if determined necessary or helpful to verify a change.</li> <li>• Incorporate a process by which self-corrections and corrections through the voluntary correction program to plan document language</li> </ul>	1.7



		<p>(prospective or retroactive) can be voluntarily disclosed and documented. The voluntary disclosure of a self-correction would not be for the purpose of seeking IRS approval of the self-correction, but to afford an opportunity to provide information about changes in plan document terms that may benefit from explanation.</p> <p>Require a restated plan document as part of the submission for non-governmental plans, both to aid EP in its review and to ensure that plan sponsors are periodically restating their plan documents rather than continuously amending them. The IRSAC does not recommend this approach for governmental plans since the governmental plan terms are frequently set forth in state statute only.</p>	
		3. Stagger initial eligibility for submissions over a period of years based on the plan sponsor's EIN to better manage review of the submissions.	1.7
		4. Increase the submission fee for filing a determination letter request for large plans. The IRSAC believes that increasing the fee would encourage plan sponsors of qualified plans that could be stated on a pre-approved prototype plan document to do so and would not dissuade other plan sponsors from filing a submission due to the significant benefits in securing a determination letter.	1.7
		5. Consider contracting with a pool of tax/benefit lawyers who would be required to complete a training/certification process and would be responsible for an initial review of submissions. Each initial reviewer could be provided with a checklist of required plan provisions/sample language so that there is consistency in plan reviews. An IRS agent could be assigned to	1.7

		<p>supervise a group of these initial reviewers, which would include answering questions and performing a final review for quality control.</p>	
		<p>6. Address the scope of the Expanded Program by covering all amendments, discretionary and required, since the last determination letter in the determination letter ruling under the Expanded Program. It will be valuable to plan sponsors to be able to secure a determination letter on the many discretionary and required changes under the SECURE Act and SECURE 2.0 Act. However, the IRSAC believes that it will be far more valuable to plan sponsors if that determination letter covered all discretionary amendments made since the last determination letter. For example, there has been a significant amount of activity on the state legislative level with respect to governmental plan changes, and governmental plan sponsors would greatly benefit from a determination letter that included a ruling on those statutorily mandated changes, in addition to those made under the SECURE Act and SECURE 2.0 Act.</p>	1.7
2024-TEGE-5	<p>Template for Exempt Organizations to Seek Penalty Abatement for Late Filed Returns</p>	<p>Prepare a template document that can be sent to exempt organizations with the IRS Form 990 late filing notice. This template document should:</p> <ul style="list-style-type: none"> <li>• Outline the ability of the exempt organization to seek an abatement from the late filing penalty.</li> <li>• List the established requirements for seeking late filing penalty abatement.</li> <li>• Include a checklist of documents and steps to seek abatement (written statement of the facts submitted under penalty of perjury, steps the organization is taking to prevent non-filing from occurring in the future, etc.).</li> </ul>	2.2 2.3

		The IRSAC notes that much of the information that would comprise the template already exists in various locations, and the goal is to compile all of this existing information in an easy-to-read document that will be sent to the late filing exempt organization together with the penalty notice. The IRSAC notes that this type of template/checklist would be useful to other types of taxpayers as well.	
2024-TEGE-6	Providing Submission Acknowledgements to Exempt Organization Filers	Upon receipt of any non-information tax return submission, provide the submitter with an automated acknowledgement of receipt (preferably within 30 days), including an estimated time frame when the IRS anticipates the processing of such submission.	1.11
2024-TS-1	Voicebots and Chatbots	1. Create a single entry point available from all applicable pages on the IRS website that will guide taxpayers through all chatbot functionality, rather than separate entry points.	1.1 1.2 1.4 1.12
		2. Offer a referral to a live agent or a call back after a taxpayer makes unclear requests multiple times	1.1 1.2 1.4 1.12
		3. Provide taxpayers an estimate of waiting time when the live assistance referral is made. Test chatbot system capacity and develop scalable capability to ensure chatbot response times meet Service Level Agreements (SLAs) during peak volume periods; test response times with users to determine appropriate SLAs.	1.1 1.2 1.4 1.12
		4. Improve accessibility to the chatbot user interface by implementing font color, font size, and window responsiveness improvements and follow industry user experience standards, to ensure that all taxpayers can easily read and interact with the chatbot.	1.1 1.2 1.4 1.12
		5. Conduct additional testing of the chatbot focused on specific demographics including taxpayers with	1.1 1.2 1.4

		disabilities and foreign language speakers. This continuous feedback loop will allow the IRS to fine tune the tool.	1.12
		6. Provide on-screen guidance to help taxpayers understand best practices to interact with the IRS chatbot.	1.1 1.2 1.4 1.12
		7. Utilize large language learning models within the chatbot to continuously improve taxpayer experience.	1.1 1.2 1.4 1.12
		8. Invest in improving the AI capabilities of the chatbot so that taxpayers' questions are answered directly instead of directing the taxpayers to read instructions and information related to their questions from IRS webpages. For example, if the taxpayer asks: "how can I change my address" or "how can I amend my tax return," the taxpayer should get a straight narrative answer instead of getting options to select from and at the end having to read instructions on IRS webpages.	1.1 1.2 1.4 1.12
2024-TS-2	Volunteer Income Tax Assistance (VITA) for the Gig Economy	1. Allow VITA sites to prepare tax returns for self-employed taxpayers who are eligible to use the simplified method to deduct home office expenses, with VITA volunteers trained on how to first determine if the taxpayer is eligible to claim a home office under Section 280A (for example, that the office is used regularly and exclusively as a home office).	1
		2. Allow VITA sites to prepare tax returns for self-employed taxpayers with a business loss up to \$5,000. Train VITA volunteers on the Section 183 loss limits and ensure client intake questionnaires and interview questions cover the information needed for this determination (including history of prior losses for the activity) and whether an election under Section 183(e) applies.	1

		3. Allow VITA sites to prepare returns for self-employed taxpayers with vehicle leasing expenses.	1
		4. Allow VITA sites to prepare returns for self-employed taxpayers who claim vehicle depreciation (including bonus depreciation and regular depreciation deductions under the Modified Accelerated Cost Recovery System (MACRS)). Train VITA volunteers on the rules for vehicle depreciation and provide an easily accessible desk card to support the VITA volunteers.	1
		5. Create a new safe harbor (modeled on the simplified home office expense deduction) allowing self-employed taxpayers to claim expenses using the business standard mileage rate in lieu of fixed and variable costs (under Treas. Reg. § 1.274-5(j)(2) and Notice 2024-07) for up to 10,000 miles driven during the year. Taxpayers would qualify for and calculate the safe harbor deduction using supporting documentation collected and maintained by ride-sharing or other gig platform companies that maintain records of miles driven.	1
2024-TS-3	Alternatives to Wet Ink Signatures for Forms 2848 and 8821	1. Allow taxpayers and representatives to submit electronically signed Forms 2848 and 8821 via fax and mail. Improve the Submit Forms 2848 and 8821 Online tool to allow submissions by taxpayers in an all-digital format accessible and easily completed and signed by those using mobile devices as well as using personal computers. While paper versions of the form should remain available, electronic versions that are mobile-friendly and have the ability to be electronically signed on the taxpayer's device would make these forms more readily available to the 90% of American households with smartphones.	1.2
		2. Recognize that the IRS and the executor of a decedent's estate have a shared interest in ensuring the	1.2

		<p>decedent's final affairs are tended to promptly and treat a Form 2848 or 8821 signed by the executor, paired with a copy of the court appointment, in the same manner it would treat these forms if signed by a living taxpayer acting on their own behalf. This involves granting the court-appointed executor access to the decedent's online account so they can check compliance, obtain required transcripts, and resolve outstanding tax issues on behalf of the estate. This would also allow the executor to accept a representative's request for access sent through their Tax Pro account.</p>	
2024-TS-4	Expanding and Accelerating Transcript Access	<p>1. <i>Provide Wage and Income Transcripts as Soon as They Are Available to the IRS:</i> Make wage and income transcripts available to taxpayers during the tax season, rather than in June of the following year. This would help taxpayers and tax professionals ensure all reported information is accurately reflected on tax returns, thereby reducing the number of AUR cases and amended returns.</p>	1
		<p>2. <i>Expand Information Included on Transcripts:</i> Include additional fields on Forms W-2 and 1099-R, to include details regarding state and local income and withholding information, to provide a more comprehensive summary that can be directly used to prepare accurate tax returns.</p>	1
		<p>3. <i>Enhance Form 1099-B Transcript Export Functionality:</i> These transcripts are often lengthy and sometimes unavailable to export due to the large file size.</p>	1
		<p>4. <i>Improve Financial Documentation for Loans:</i> Enhance the tax transcripts to include additional fields required for income calculations used by entities with Federal Housing Finance Agency (FHFA) oversight. This would help lower-income borrowers by reducing the cost of</p>	1

		securing loans and making the loan approval process more efficient.	
		5. <i>Ensure Availability of Key Transcript Types</i> : Make important forms like Form 1041 and Form 1040X available in tax transcripts to facilitate issue resolution and increase transparency.	1

## **APPENDIX C: Mapping Active Recommendations from 2019 - 2023 IRSAC Reports to the IRS Strategic Operating Plan (SOP)**

The objectives and initiatives in the table below are from the Internal Revenue Service Inflation Reduction Act Strategic Operating Plan, FY 2023-2031 (Publication 3744).

- Full report available at: <https://www.irs.gov/about-irs/irs-inflation-reduction-act-strategic-operating-plan>
- News release on the report (IR-2023-72; April 6, 2023): <https://www.irs.gov/newsroom/irs-unveils-strategic-operating-plan-ambitious-effort-details-a-decade-of-change>
- Links to SOP and supplements: <https://www.irs.gov/about-irs/irs-inflation-reduction-act-strategic-operating-plan>

See Appendix B for a listing of the 42 initiative numbers within the five objectives of the SOP.



Note: Where the SOP Initiative column shows 1, 2, 3, 4 or 5 rather than, for example, 1.7, it means that the recommendation does not fit precisely within an initiative but does fit within an SOP objective (see list of SOP objectives and initiatives at the start of Appendix B).

ID#	ISSUE	RECOMMENDATIONS	SOP INITIATIVE
2019- IRSAC -3	IRS Penalty Process	The IRS is considering a process where prior to notifying a taxpayer about proposed penalties, they will identify if a taxpayer qualifies for a FTA waiver and grant the taxpayer penalty relief automatically. If the taxpayer does qualify for the FTA, the IRS will notify the taxpayer through an official mailing. The IRSAC applauds the IRS for considering this efficient process for handling penalty waivers. The IRSAC recommends the notification to the taxpayer of the FTA application also include information that if a taxpayer chooses to utilize a reasonable cause abatement, they may do so within a thirty-to-sixty-day timeframe. The IRSAC believes taxpayers should retain the right to choose whether or not to pursue penalty abatement through a reasonable cause defense, even if a FTA is available to them. The IRSAC recommends the Office of Servicewide Penalties retroactively apply the reasonable cause abatement to the taxpayer's account, thus preserving a possible future FTA waiver.	2
2019- LBI-1	Issue by Issue Extension of Elements of the CAP Program	For LB&I taxpayers, with assets over \$XX million that have certified audited financial statements, we recommend that the IRS allow them to file a form requesting a decision for specific issue(s) for a specific year. This form should allow the taxpayer to identify such an issue(s) and provide relevant documents, opinions or other evidence to support its position(s). See pages 165 to 166 of the report for further details.	2.4
2019- SBSE- 1	Form W-4 2020 Version	3 - The IRSAC recommends the IRS further clarify the "withhold at a higher rate" check box in step 2 and provide examples of the higher amounts of withholding. The IRSAC further recommends the IRS state that the employee could check Single status even when married to have additional withholding (as in prior years).	1

2019-SBSE-3	Sharing Economy and Impact on the Tax Gap	3 - Publish a definition of “gross amount” for purposes of transaction thresholds for reporting on Form 1099-K that excludes from the reportable amount items that are not part of the economic transaction between the parties. Specifically, the IRSAC recommends that the IRS provide a way to exclude from the reportable amount items that are not part of the economic transaction between the parties (e.g., discounts, returns, allowances and taxes collected on the transaction). The current full gross amount is not meaningful as a business transaction amount and is not easy to use from a reconciliation point of view. The IRSAC recommends that the IRS consider alternative ways of addressing this issue and might want to consider adding a box to Form 1099-K to allow voluntary reporting of an adjustment amount (e.g., for returns, allowances, discounts, etc.). The IRSAC recommends that the IRS work with businesses to understand better alternative definitions of “gross amount” that would be more useful for reporting purposes.	1
		4 - Consider reviewing the definition of “third party settlement organization” (TPSO) for purposes of tax reporting and filing to reduce the type of participants in the sharing economy whose income is reportable on Form 1099-K and thus, would be then reportable on other information returns such as Form 1099-MISC. The IRSAC suggests that the IRS focus this review on how the “tie breaker rule” is employed when determining when the regulations under section 6041 or 6041A apply, rather than when section 6050W should be applied.	1.7
2019-SBSE-7	On-Demand Payroll	The IRSAC recommends that the IRS pursue the creation of guidance for on-demand payroll, working with other stakeholders such as the Social Security Administration, Department of Labor, Consumer Financial Protection Bureau and possibly the various states, as quickly as possible that addresses the issues and questions outlined above.	1.7
2019-SBSE-8	Employer Reporting, Form 945,	1 - Make needed changes to forms, publications and instructions, to require employer identification number (EIN) consistency in	3

	Annual Return of Withheld Federal Income Tax	information return reporting and on Forms 945/945-A by tax year 2021 or sooner.	
		2 - Fully implement the IRS's communication plan to achieve payor awareness of the compliance requirements and to articulate a requirement for consistent EIN reporting. A timely IRS communication effort would be informative on tax compliance rules and would help enable payors to make any needed system and process changes to help ensure that information returns, and Forms 945/945-A are reported under the same EIN.	2
		3 - Continue focusing on training and education on backup withholding requirements for both taxpayers and IRS compliance and audit staff.	3
		4 - Continue to explore adding a Schedule R for Form 945/945-A to enable reporting of organizational structures as determined by the IRS to serve as an aid in compliance efforts.	1
		5 - Develop and issue a letter to the taxpayer when an EIN inconsistency is identified between information return reporting and Forms 945/945-A. This letter would be used to inform and educate the taxpayer for one or two years prior to issuance of any penalty for non-compliance.	2.2
2019-TEGE-3	Self Correction for Tax-Advantaged Bonds	1 - The IRS should establish a consolidated, to the extent practicable, flexible multi-level self-correction program, in a revenue procedure that is periodically updated, that encourages compliance by incentivizing issuers to self-correct. We suggest that the self-correction program be established with flexibility for the IRS to refine the program, describing additional applicability, additional remedial actions and moving particular violations to different levels for remediation.	1
		2 - Similar to what has been done with respect to employee plans, we suggest that for existing violations there be three levels of voluntary correction (see pages 156 to 157 of the report for further details).	2.2
		3 - With respect to the overall program, we recommend that the required remediation be refined to encourage issuers to identify and voluntarily correct violations early. Cash	2.2

		<p>payment remediation that is significantly less than the liability as a result of an audit and that is scaled to encourage early correction will facilitate self-correction in an efficient manner.</p>	
		<p>4 - We recommend a simplified reasonable formula be provided for cash payments and not necessarily attempt to calculate tax exposure. To lessen complexity, we suggest that the new revenue procedure build upon and potentially cross reference concepts in existing “change in use” procedures of Treasury Regulation §1.141-12 and Revenue Procedure 2018-26.</p>	2.2
		<p>5 - We recommend that issuers be provided more flexible methods of remediation, building upon concepts in the “change in use” procedures of Treasury Regulation §1.141-12 and Revenue Procedure 2018-26 such as permitting remediation by investment in tax-exempt obligations and/or expenditures on qualified project costs.</p>	2.2
2019-WI-2	<p>Test to Expand Systemic Verification to Improve Voluntary Compliance for Income Reporting</p>	<p>1 - Provide access and visibility to the informational notice via the taxpayer online account. This platform already functions within the electronic Authentication, Authorization and Access (eA3) framework and is an essential electronic taxpayer resource. This will improve communication with the taxpayer and potentially increase the response rate as the online account adoption rate grows. The IRSAC suggests the taxpayer receive a notification that the letter has been sent to their online account.</p>	1
		<p>3 - Add an informational box to Form 1040X, Amended U.S. Individual Income Tax Return, Part III – Explanation of Changes section indicating the source of the amendment being made. By adding this data point to the Form 1040X, the IRS could gain valuable metrics on response rates for different communications channels, including this informational notice.</p>	4.7
		<p>4 - Upon selection of taxpayers that qualify for the informational notice (Letter 6115C), send a copy to the third-party designee indicated on the originally filed tax return. This will result in the IRS receiving a faster response.</p>	2.3

2020-SBSE-4	Identity Theft and Form 1099 Filing	6 - Require the payer to obtain the correct identification number and address for the worker/vendor after it has been notified that the information provided to it is inaccurate and after two attempts require back-up withholding from the payments.	3
		7 - Request legislation to provide for back-up withholding from payments made to known bad actors. The legislation should specify the back-up withholding rate as the maximum individual income tax rate. The IRS will receive the back-up withholding and the IDT victim would receive the benefit of the back-up withholding. Using the highest individual income tax rate could be a deterrent to individuals stealing another individual's identity.	3
2020-TEGE-1	Establish Comprehensive Resources for Native American Taxpayers and Federally Recognized Tribes	6 - Improve access, increase understanding, and increase the use of the IRS self-correction programs already available to tribes by providing descriptions and links to these programs from the webpage.	1
		8 - Include in the database executive orders that supplement or modify treaties.	1
2020-TEGE-6	How Can the Form 990 Instructions be Improved to Minimize or Eliminate Ambiguities that Exist with Regard to Tax-Favored Cooperative Organizations?	1 - Form 990 Part IV, line 28 c refers to "certain interested persons" and then recommends a careful review of the instructions for Schedule L. The "Specific Instructions" section of the Schedule L Instructions defines "Interested Persons" differently, depending on which part of the Form is being completed. Clarity as to exactly what definition is intended for Form 990 is essential in order to correctly report director independency.	1
		2 - Form 990, Part I, Line 14 and Part IX, Line 4 requires reporting of "Benefits Paid to Members" which specifically includes patronage dividends paid by 501(c)(12) cooperatives to their members. No guidance is provided on how to treat payments to members to retire their patronage capital and how to report these items. Clear instructions on how to report patronage capital retirement payments	1

	should bring consistency in reporting among cooperatives.	
	3 - Clarification on how a patronage sourced loss from a prior year is recovered in the current year. Many tax professionals are of the view that the only option for recovery is to report the actual patronage allocation and then explain the loss or net income reported on Part I, Line 19 in Schedule O. If this is the case, the Form 990 instructions should so specify.	1
	4 - Form 990, Part IX – Clarification on what system is acceptable to complete the Statement of Functional Expenses. The Instructions' current guidance is "Use the organization's normal accounting method to complete this section. If the organization's accounting system doesn't allocate expenses, the organization can use any reasonable method of allocation." Unfortunately, this does not address expenses that must be reclassified in order to report expenses in the proper categories of lines 1–23. Guidance should be provided as to whether the IRS prefers that preparers: (1) re-create records to fit into each line item, (2) use current accounting classifications then reclassify director compensation, wages, benefits and payroll taxes and report remaining amounts on line 24, or (3) use current accounting classifications and reclassify only compensation and benefits for directors, officers and key employees, then explain A&G expenses on Schedule O. If all such methods are acceptable, the instructions should so state.	1
	5 - Form 990, Part VII on reporting of compensation for officers, directors, key employees, etc. does not provide clarity on the reporting of 457(f) deferred compensation benefits. Guidance could specify that reporting should follow Schedule J, Part II, Column F, and further provide a mechanism to avoid double reporting. Although the 990 instructions do provide a "Where to Report" chart beginning on page 34 which references Schedule J, there is no specific reference to Schedule J, Part II, Column F, which states that the preparer should "Enter in column (F) any payment reported in	1

		<p>this year's column (B) to the extent such payment was already reported as deferred compensation to the listed person in a prior Form 990, 990-EZ, or 990-PF.”</p>	
		<p>6 - With respect to multi-employer plans, some clarification on reporting methods would be helpful. Specifically, with multi-employer plans, the employer could report the annual contribution made for the individual's benefit. For financial accounting purposes, multi-employer plans use cash basis reporting based on actual payment to the plan during the year. The actuarial value of benefits earned are not recorded. The IRSAC recommends that the instructions provide that following the financial accounting requirements for multi-employer plans is an acceptable reporting method. This guidance would simplify reporting and facilitate greater understanding of these amounts by the general public.</p>	1
2020-WI-1	Taxpayer Digital Communications Next Step and Taxpayer Digital Communications Outbound Notification	<p>7 - Accelerate its Customer Experience Service Delivery (CX/SD) Plan to leverage its “Hey, Neighbor” messaging, which is intended to write content as if a human wrote it, eliminating legalese and bureaucratic language that may unnecessarily confuse a taxpayer.</p>	2.3
2020-WI-3	Reporting & Outreach Business Identity Theft	<p>1 - Research, develop, and implement secure digital channels for BMF IDT-related correspondence – including the initial filing of Form 14039-B.</p>	4.4
2020-WI-5	Employer Tax Forms and Information Reporting	<p>1 - Create a checkbox on Form W-2 that can be checked by employers who use an Employer/Payer Appointment of Agent or CPEO reporting arrangement (see additional details at page 158 of the report).</p>	1
		<p>2 - Include, to clarify the identity of both the employer and the third-party agent, an additional field/box on Form W-2 to reflect the actual (common law) employer's EIN.</p>	1

2021- GEN-2	Implementati on of the Taxpayer First Act Section 1302, Modernizatio n of Internal Revenue Service Organizatio nal Structure	3 - Consider maintaining a sub-structure or segmentation within the new Exam Office that mimics the taxpayer-specific expertise that the TE/GE, SB/SE, and LB&I organizations provide today.	1.1
		4 - Consider retaining the infrastructure (i.e., people, process, and funding) that supports special programs tailored to taxpayer's needs, e.g., the CAP, ICAP, and VCAP.	1.1
2021- GEN-3	Independent Office of Appeals	2 - Fully implement Enterprise Case Management (ECM) software and paperless case files throughout Appeals and the IRS so that cases can seamlessly travel from Exam and Collections databases into the Appeals database, greatly speeding the time a taxpayer's case can move to Appeals.	1.2
2021- GEN-5	Circular 230 Revision	Work with the Treasury Department to update Circular 230 for currency, relevancy, and readability.	1.9
2021- IR-1	Payors of Income Related to Digital Assets Need Information Reporting & Withholding Guidance	1 - Expedite the release of the modifications under Section 6045 in order to minimize ongoing taxpayer issues with digital asset transactions.	1.7
		2 - Develop a strategic plan for analyzing and providing the industry with applicable withholding and information reporting guidance for other digital asset related transactions including income from staking, lending activities and NFT marketplaces.	1.7
		3 - Update existing publications and Form 1099 Instructions with examples of digital asset transactions subject to the requirements. Leverage traditional communications like Internal Revenue Bulletins to articulate guidance for more specific application of details.	1.7
2021- IR-4	Negative Interest Rates	1 - Publish guidance with respect to the source of a negative rate payment. Such guidance should be broad enough to cover payments on routine financial transactions such as deposits, collateral on derivatives, margin loans and repos.	1.7



		2 - If there are scenarios in which published guidance treats a negative rate payment as U.S. source fixed or determinable annual or periodical (FDAP) income, (i) such guidance should be effective only after an adequate transition period for withholding agents to modify systems to account for such guidance, and (ii) the IRS should not challenge taxpayers who have taken a reasonable position with respect to the tax characterization and source of a negative rate payment prior to the effective date of such guidance	1.7
2021-LBI-4	Ensuring the Timely Issuance of Certificate of Residency Forms	1 - Permit electronic filing of Form 8802, Application for United States Residency Certification.	1.5
2021-SBSE-1	The IRS COVID19 Response	4 - Expand Tax Pro Online Account functionality to provide authorized representatives with access to digital notices, particularly for Collection notices.	1.4
		5 - Expand authenticated text chat for authorized third parties to resolve collection issues.	1.4
2021-SBSE-2	The Compliance Effort Around Abusive Promoters and Preparers	6 - Inform and educate Congress and its staffers on the importance of, and the need for, enhanced legal authority to more expeditiously penalize abusive promoters and preparers.	1.9
2021-WI-3	Determining the Usefulness of Publication 938	1 - Develop Publication 938 as a searchable database with real-time information on REMICs and CDO issuers.	1
2022-IR-1	Alignment of Electronic Signature Requirements on Withholding Certificates	1 - The IRSAC recommends the IRS align the electronic signature rules between Forms W-9, W-4, W-4P, and W-4R and the Form W-8 withholding certificates by issuing guidance that electronic signatures are allowable on Forms W-9, W-4, W-4R and W-4P regardless of whether the payor has developed an “electronic	1.1

		submission system”, as long as the form reasonably demonstrates that it has been electronically signed by the recipient identified on the form (or a person authorized to sign for the recipient).	
		2 - The IRSAC also recommends the IRS modify the signature block on Forms W-9, W-4, W-4P, and W-4R to accommodate an electronic signature (identical to the Forms W-8).	1.1
2022-IR-3	Enabling Business Online Accounts and Electronic Communications and Transactions	1 - Explore ways to tackle paper processing of employment tax returns.	4.1
		2 - Develop a secure e-mail process for businesses and the IRS to receive and send time-sensitive penalty correspondence or correspondence that contains private taxpayer information.	4.1
2022-IR-4	Wage Reporting for Payments to Incarcerated Individuals	1 - Update Publication 15 (Circular E), Employer’s Tax Guide and Instructions for Forms W-2 and 1099-NEC to include a cautionary note related to individuals who are incarcerated, and to reference the Office of Chief Counsel guidance.	1.7
2022-LBI-1	Accelerate Issuance of IRS Form 6166, Certification of U.S. Residency	1 - Prioritize electronic filing of Form 8802.	1.2
2022-LBI-3	Procedures For Partners that Receive Late Schedule K-1 Filings	1 - Use good faith estimates with respect to late received Schedules K-1 to timely file their Form 1120.	2.4
		2 - Correct any such estimated amounts (to the extent necessary) on the subsequent tax year’s Form 1120 (including the payment of any interest attributable to an increase in tax for the original reporting year resulting from such true-up and consent to extend the statute of limitations solely with respect to these corrected amounts).	1.8
		3 - Include an attestation signed under penalty of perjury that the estimated amounts are good faith estimates to best knowledge of the corporate taxpayer and the Schedules K-1 were	2.4

		not received on or prior to September 15 and similar timing for fiscal year large corporate taxpayers.	
		4 - IRSAC also recommends that LB&I seek public comment from large corporate taxpayers that are domestic partners on this procedure with respect to correcting items of income, gain, loss, deduction and/or credit.	4.8
2022-SBSE-1	Examination Customer Coordination and Innovation Office	1 - Improve the functionality of the IRS's Online Account to make it a "one-stop-shop" for taxpayers to obtain tailored online service while guarding against the risk of identity theft.	1.4
		3 - Improve the ability of taxpayers to satisfy their tax obligations online by expanding on taxpayers' current ability to obtain transcripts through their Taxpayer Account.	1.4
2022-TEGE-2	Recommendations for Employee Plan Examination Compliance Approaches	1 - Adopt the Preaudit Contact program as a regular, broad-based compliance tool utilized prior to the commencement of audits where a specific compliance area of focus has been identified and continue to refine the program over time as EP receives stakeholder feedback and evaluates plan sponsor questions and responses.	3
2022-TEGE-5	Recommendations for Effective State Engagement to Promote Employment Tax Compliance	1 - Partner with national organizations serving state, county, and local government entities to communicate and highlight available IRS FSLG resources through inclusion of information in organization's developed communication channels (listserv/newsletters/conferences/webinars, etc.). Organizations may include the National Association of State Auditors, Comptrollers and Treasurers (NASACT), National Association of Counties (NACO), National League of Cities (NLC), National Association of Towns & Townships (NATaT), and/or national HR/Payroll management associations.	1.9
		3 - Develop an FSLG user community education/dialogue group by establishing an on-going, monthly, virtual FSLG compliance education series open to all FSLG entities which highlights a different topic each month using the existing resources (videos, etc.) and is hosted live by an IRS FSLG representative	1.9

		capable of leading a discussion and answering questions on the topic.	
		4 - Market existing resources through development of a short-term marketing campaign to highlight and communicate compliance resources for a “Top Five Focus” aimed at increasing compliance in the top areas for audit findings in employment tax as applied to State and Local government workers.	1.9
2022-WI-1	Business Master File (BMF) Transcript Delivery Service (TDS)	5 - IRS should consider the expansion of BMF Transcripts as part of the IRS modernization plans.	1.6
		6 - IRS should schedule regular engagement with industry members, including outreach via IRS Stakeholder liaisons who regularly meet with industry leaders in each state, to understand the relative benefits of implementing specific new transcript deliveries through TDS.	1.9
2022-WI-4	Form SS-4, EIN Application, Daily Limit per Responsible Party	Increase the EIN issuances limitation to 10 per responsible party, per day. This increase would enable applicants that require multiple EINs to obtain them in a more expedited manner.	1
2023-GEN-1	Budget Shortfalls Need to be Addressed with Lawmakers	1. Formulate a brief, but impactful analysis (for discussion with lawmakers) that articulates the benefits of: <ul style="list-style-type: none"> <li>a. Increasing annual appropriations to the taxpayer services account to ensure the IRS can deliver a service level of at least 85% during filing season.</li> <li>b. Restoring annual appropriations to the business systems modernization account to ensure the IRS can continue to modernize systems and processes.</li> <li>c. Adjusting annual appropriations for inflation to ensure the IRS does not need to rely on other funding (e.g., IRA appropriations) to offset inflationary increases that were not included in annual congressional appropriations.</li> </ul>	1, 4

2023-IR-2	Corrections of State Information on Information Returns Should be Included in the Combined Federal / State Filing (CF/SF) Program	1. The IRS should eliminate the restriction on filing state-only corrections of information returns through the CF/SF program, thereby accepting information return corrections of state-only fields from information return issuers.	4.4 & 4.5
		2. The IRS should timely provide to states that participate in CF/SF all corrections, regardless of whether corrections include updates to "Federal" fields.	4.3, 4.4 & 4.5
		3. The IRS should consider adding forms to the CF/SF program such as Form 1098, 1098-E, W-2G, and 1099-C.	4.3 & 4.5
		4. The IRS should examine providing information to states earlier and more frequently to increase the value of CF/SF participation to the states, and to encourage states to allow information returns filed through the CF/SF program to satisfy their filing requirements.	4.3, 4.4 & 4.5
2023-LBI-1	Increase Use of Pre-Filing Agreements and Other Tax Certainty Programs	1. Increase the scope of PFA qualifying issues for consideration by LB&I.	1.7
		2. Advertise and market PFAs to strategically selected target audiences of corporate tax department and CPA and law firm personnel (such as at conferences and contact with professional tax organizations to which these individuals belong) highlighting advantages.	1.7
		3. Reassess the fee structure for PFAs and similar tax certainty programs.	1.7
2023-LBI-4	Accelerate Issuance of IRS Form 6166, Certificate of Residency	1. Prioritize electronic filing of Form 8802, Application for United States Residency Certification.	1.2
		3. Engage and educate other countries' competent authorities so they are aware of the IRS timeline for issuing CoRs and advocate for grace periods for taxpayers to provide CoRs to claim treaty benefits.	1
2023-SBSE-1	Acceptance of Tax Payments in Cryptocurrency	1. The IRS should add the proposed language clarifying that credit/debit cards that use cryptocurrency to cover USD purchases can be used for payments to the IRS via the three card services vendors. On a similar note, language should be added clarifying that foreign issued and foreign currency denominated debit and credit cards that are capable of being charged in USD are also accepted under the current system.	1.10

	<p>2. The IRS should utilize a zero-cost procurement to obtain one or more contracts with vendors that will accept cryptocurrency payments and pay its value in USD to the IRS on the user's behalf, at a rate displayed to the user before the transaction.</p> <p>a. Although the IRS initially proposed adding acceptance of cryptocurrency as an additional requirement to one of the three credit/debit card processing procurements at the next renewal, the IRSAC believes that it would be most cost-efficient to create a separate procurement (or multiple ones, to provide taxpayers a choice of vendors) specifically for cryptocurrency payments. This will preserve the ability to select the best providers in each category and ensure that firms only prepared to engage in one type of payments, which might have more competitive rates, are not excluded from participating in the procurement.</p> <p>b. The procurement should require that all vendors use an IRS-designated exchange rate from an independent entity. Vendors must show fees to the taxpayer and in their proposal as a separate line item, not as a spread or markup included in the exchange rate itself. This will allow vendors to be fairly evaluated by the IRS and allow taxpayers to easily compare the fees between providers or other methods of payment, in the same way they can with card payments.</p> <p>c. The procurement should not require fees for processing cryptocurrency to be similar to those for accepting credit card payments, because the nature of these payment networks is completely different. If a benchmark is to be used by the IRS for evaluating reasonableness of fees, the IRSAC recommends that the IRS look to fees for selling cryptocurrency on major exchanges, since that would be the alternative for taxpayers who want to use their cryptocurrencies to pay tax.</p> <p>d. The procurement should require that taxpayers are not required to use any other product or service provided by the vendor, including a "hosted wallet" or cryptocurrency</p>	<p>1.10</p>
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		exchange, nor to consent to any non-essential processing or use of their personal or tax payment information.	
		3. The IRS should consider whether it would be beneficial to accept foreign currency payments using a similar model to the one proposed for cryptocurrency payments, where the foreign currency would be accepted and exchanged by an IRS-contracted vendor and then paid to the IRS in USD. Providing a means for taxpayers to directly pay with foreign currencies would allow taxpayers who do not reside in or frequently visit the US to avoid maintaining a US bank account or making international wire transfers to pay their tax obligations, and could help increase tax awareness and compliance for international taxpayers, including US citizens living or working abroad.	1.10
2023-SBSE-2	Impact on Taxpayers of Modifying Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return	2. In addition to creating Form 709-X, consideration should be given to moving the Form 709 and if created the Form 709-X to the modernized e-file platform. Electronic filing creates more accurate return filing and allows accessibility without having to search through paper returns housed at multiple IRS locations.	1.2
2023-SBSE-3	Form 1099-K Reporting	1. Create a new form or schedule (Form) to reconcile Forms 1099-K to the actual reportable income on the individual's Form 1040. This would benefit both business owners and individuals who receive erroneous Forms 1099-K or ones that include taxable and non-taxable amounts. Such a form could also be used to reconcile other types of information returns that may be incorrect.	1
		2. The new Form should provide the ability to indicate personal items included in the Form 1099-K that are not considered income.	1
		3. If the amounts reported on the Form 1099-K include amounts that are reported on multiple forms or schedules, the new Form should provide the ability to indicate the amounts and	1

		form or schedule it is reported on in the individuals Form 1040.	
		4. If the amounts reported on the Form 1099-K include items that are not income (such a sales tax collected) the new Form should provide the ability to indicate those amounts in the reconciliation.	1
		5. The instructions to the new Form should clearly indicate the new Form is not required to be completed if there are no personal items included in the Form 1099-K or the amounts are not reported on multiple forms or schedules on the individuals Form 1040.	1.8 & 3.7
2023-SBSE-4	Modifying Form 2290, Heavy Highway Vehicle Use Tax Return	1. Form 2290-X, Amended Heavy Highway Vehicle Use Tax Return, should be created. Features of this form and its instructions: a. It should include a section for the filer to explain the reason for the amended return and note that the filer may also attach supporting documentation and new forms and schedules (see Form 1040-X as a model). b. It should be used for any change needed to the original Form 2290 including correcting a VIN. c. It should list the most common reasons for filing, designed to allow the filer to check which reasons apply. d. The instructions should be clear that Form 2290-X is not used to report a vehicle acquired after the annual filing of Form 2290, but instead Form 2290 is filed to report and pay tax on the new vehicle(s).	1
		3. The address change check box should be removed from page 1 of Form 2290. The instructions should be updated to remind the filer to use their current address and if there has been an address change, they should file Form 8822 or Form 8822-B as appropriate to report the change to the IRS for all tax purposes.	1.4
		4. The Form 2290 instructions should remind filers what to do if the name for a truck registration does not tie to the EIN or name on Form 2290 and the importance of the taxpayer's name and EIN used on Form 2290 (or 2290-X) match.	1.4



2023-SBSE-5	IRS Paid Preparer Due Diligence Penalties	3. In line with SOP section 2.3, Develop taxpayer-centric notices, it is recommended that the IRS amend/revise the wording in the Due Diligence Warning Letters (L5025-F and L4858 included with this report) sent to tax practitioners related to their Due Diligence Requirements. Currently, the wording is somewhat strong and accusatory to the tax preparers without the IRS ever having looked at any actual tax returns.	2.3
2023-TEGE-1	Recommendations on Self-Correction Guidance for Employee Plans	1. Expand EPCRS to permit direct transfers between different types of plans maintained by the same employer when contributions have erroneously been made to one plan when they should have been made to another plan.	2.4
		2. Expand EPCRS to allow plan sponsors to use the Department of Labor lost earnings calculator as a reasonable alternative method for calculating lost earnings when correcting failures.	2.4
		3. Expand EPCRS to allow a retroactive amendment to correct an ADP/ACP testing error by changing testing methods if the amendment would have been permitted under the Internal Revenue Code if timely adopted and it does not favor HCEs over non-HCEs.	2.4
		4. Expand EPCRS to allow plan sponsors to self-correct failures to timely amend the plan for tax law changes.	2.4
		5. Expand EPCRS to provide guidance on how to correct failures regarding both underpayments of and excess mandatory employee contributions with respect to governmental plans.	2.4
		6. Expand EPCRS to address corrections of missed RMDs due to vendor failures when a deselected vendor fails or refuses to make RMDs, and the plan sponsor has no control over the assets.	2.4
		7. Update EPCRS to address statutory changes in Section 301 of SECURE 2.0 with respect to correcting overpayment errors.	2.4
		8. Reorganize the EPCRS to group together all correction methods related to a single type of failure to facilitate compliance.	2.4

		9. Review the types of errors being filed under the VCP to determine additional guidance that may be needed under the EPCRS for plan sponsors to adequately self-correct for the same errors.	4.6
		10. Continue to request comments from plan sponsors on the EPCRS updates to gather information on how employers are using the SCP.	4.8
2023-TEGE-3	Recommendations for More Effective Engagement Between IRS and Exempt Organizations	3. Develop additional resources on the following topics of potential interest to exempt organizations: a. Electronic filing requirements b. Information tax return filing deadlines c. Form 8940 d. Public disclosure obligations e. IRS audits of exempt organizations	1
		4. Develop new resources on the following topics of potential interest to exempt organizations: a. Annotated Form 990 b. Getting Things Done with the IRS c. Plain English Glossary d. The Basics of the §501(c)(3) Exemption	1
		5. Update the charities section of irs.gov to reflect separate, focused pages of resources for small, mid-size and large exempt organizations allowing organizations to quickly access the information most relevant to their needs.	1
		6. Make change of address cards available to exempt organizations and include prominent links on irs.gov for exempt organizations to change their address of record with the Internal Revenue Service.	1
		7. Require exempt organizations to have an e-mail address for more efficient and effective communications. Require exempt organizations to include the e-mail address on Form 990 and expand the EO Business Master File to include an e-mail column.	1
		8. Update IRS documentation to recommend (or require, per recommendation #7) that small exempt organizations obtain an “organization e-mail” that can be passed down to future volunteer Board members.	1

		9. Consider increasing accessibility to Form 990-EZ for self-preparation by exempt organizations.	1
		10. Develop training sessions, such as those presented at the TE/GE session at the IRS Nationwide Tax Forums, to match the level of the audience in attendance to ensure understanding of the material, highlighting the exempt organization resources available at irs.gov for attendees seeking more detailed information.	1.9
		11. Increase communication via partnerships with states, community foundations and nonprofit associations to expand communication channels through participation and/or inclusion of IRS materials in their outreach/engagement efforts.	4.8
2023-TEGE-4	Recommendations for Effective Engagement for Section 218 and 218A Agreements	1. To address the level of turnover that can occur in state government positions, complete an annual outreach via email to all named State Social Security Administrators and Indian Tribal government contacts responsible for Section 218/218A oversight including an attachment of Publication 963 and highlighting key best practices for consideration in fulfilling this responsibility.	1.7 & 1.9
		2. Coordinate a semi-annual outreach webinar between the IRS Section 218/218A champion for each IRS segment/group and the state/ITG administrators to provide updates, highlight current trends/risk, encourage best practices, increase trust via direct contact with key resources, and invite dialogue on questions from states/ITG and/or sharing between states of effective compliance efforts. Recordings of the webinars can be posted on the website for future reference/training.	1.7 & 1.9
		3. Engage with state-level municipal service organizations to include information regarding Section 218 agreements in annual conferences/outreaches to increase the awareness and understanding of the agreements and compliance requirements.	1.7 & 1.9
		4. Engage with Indian Tribal Governments organizations to include information regarding Section 218A agreements in annual	1.7 & 1.9

		conferences/outreaches to increase the awareness and understanding of the agreements and compliance requirements.	
		5. Designate an employee from the IRS Office of Indian Tribal Governments to answer Section 218A questions and provide ongoing services and support in this area.	1.7 & 1.9
2023-TEGE-5	Recommendations for Increasing the Tax Reporting Threshold for Slot Machine Jackpot Winnings	1. Pursue addition to the IRS Priority Guidance Plan to recommend and support through appropriate authorities, including the Secretary of the Treasury, an increase to the tax reporting threshold for slot machine jackpot winnings to \$5,000 (modification to Treas. Reg. 1.6044.71-10).	4.7
		2. For calendar years beginning after the first year of a \$5,000 threshold, consider periodic increases to increase the threshold to a dollar amount multiplied by the cost-of-living adjustment.	4.7
2023-WI-2	Notices and Communication	2. The RIVO program should collaborate with the Taxpayer Experience Office to understand the challenges taxpayers face navigating IRS processes and identify global changes to the DUT that would increase taxpayer usage of the DUT and make the DUT more user-friendly.	4.3
		3. The RIVO program should work to revise notices to: a. Clearly and distinctly show the “New” Documentation Upload Tool option on notices and correspondences to help taxpayers understand they could respond quickly using a mobile device. d. On page 1 of the CP letters, delineate “Next Steps” into “Next Steps for You” and “Next Steps for IRS” so the taxpayer can easily understand what they need to do and what the IRS will do following their response (or lack of response). Complete a user study on the notices and observe taxpayers reading and trying to respond to each letter in question.	4.3
		4. Rename the Documentation Upload Tool and redesign the landing page (splash page) so it clearly names itself as an online response option that taxpayers receiving IRS letters/notices may use to respond.	1.2

		5. Enable taxpayers to retrieve and view digital copies of their submissions through their Taxpayer Online Account and see what step of the process their notice is in.	1.4
		6. Develop programming and modernize underlying systems to take documents sent through DUT and automatically attach them to the taxpayer's account.	1.4
		7. Incorporate a direct path to the DUT from the Taxpayer Online Account and Tax Professional Online Account and digitally provided copy of the taxpayer's notice as an authenticated service to streamline processes.	1.4
		8. Build an interface meant for taxpayer representatives to allow them to upload documents on behalf of taxpayers through the DUT, provide them date/stamped receipt, and a method for them to access digital copies of the information.	1.4
2023- WI-3	Forms Modernization	1. Publish publicly the set of common evaluation criteria it uses to assess specific IRS forms for modernization, and any new forms that may be identified and prioritized for addition.	4.3
		2. Continue to focus on the forms identified for modernization with a focus on improving the taxpayer experience, including the prioritization of Form 14039 and Form 8821A.	4.3
		3. Evaluate the following forms for the forms modernization effort: a. Form 2848, Power of Attorney b. Form W-7, Application for IRS Individual Taxpayer Identification Number	1.2
2023- WI-4	Modernizing the ITIN Process	1. Develop a pre-filing ITIN application procedure that allows new ITIN applicants and ITIN holders with expired ITINs to submit Form W-7 separately and ahead of their income tax return.	1
		2. Identify two to three key improvements that would cause more VITAs to provide CAA services, such as: a. Review the CAA application process to make it more accessible to minority communities. b. Publicize the CAA program as a VITA engagement and promote it by highlighting	1

	each VITA site that recruits a CAA. c. Declare a CAA-ITIN Awareness Day.	
	3. Test and scale up the effect of combined VITA/CAA services by executing a carefully targeted “pilot program” to evaluate the co-location of VITA services with CAA services in two to three key geographical areas where TACs are not easily reached.	1
	4. Establish a requirement for all VITA sites to apply for at least one CAA or show a working agreement with a CAA as part of their grant application.	1
	5. Improve the Acceptance Agent (AA) Program AA/CAA locator online search tool by incorporating the same zip code search mechanism used by the IRS VITA locator tool, including the option to search for AA, CAA, or both, and including a support process for AAs and CAAs to update their contact information.	1
	6. Ensure that Quality Assurance (QA) on the IRS Direct File Pilot includes multiple test cases with ITIN holders as the primary, secondary, or dependent.	1
	9. Evaluate the capability of using document upload tools to minimize the use of paper for Form W-7 applications and allow for electronic filing.	1
	11. Digitize the ITIN application process by creating an online portal for applications and supplemental documents, if needed.	1.2
	12. Work with the Treasury Department’s Office of Tax Analysis (OTA) and other partners to better understand and publish the needs of taxpayers with ITINs by using data and research.	1



## **APPENDIX D: IRSAC Member Biographies**

**Amanda Aguillard** – Ms. Aguillard is the Chief Operations Officer with Padgett Business Services. She has been involved in assisting small business taxpayers for over 20 years with income and other tax issues. Prior to joining Padgett Business Services, she worked with large accounting firms in her capacity as a National Ambassador for New Zealand-headquartered Xero. She co-founded and runs Elefant, a training and consulting company for accountants and Bookkeepers. Aguillard holds a Bachelor of Science degree in Accounting from the University of Louisiana at Lafayette and a Master of Taxation from the University of Denver. Aguillard represents small business, and she is a member of the AICPA and the Society of Louisiana CPAs. **(Small Business/Self-Employed Subgroup)**

**Robert Barr** – Mr. Barr is the Vice President of Business Engineering of CGI Federal in Dallas, TX. Mr. Barr has led digital transformations for both public and private sector organizations, including the South Carolina Department of Revenue, Intuit, Dell, Blockbuster and USAA. At the S.C. Department of Revenue, he enabled the Fed-State electronic filing program and pioneered the electronic payment of business taxes. At Intuit, he built the private sector platform to electronically file tax returns for TurboTax. He also served as the Internal Revenue Service Assistant Commissioner for Electronic Tax Administration where he branded IRS e-file and EFTPS, established the National Accounts Program, enabled credit card payment of taxes and digital signing, brokered the first free file programs by the private sector and introduced the IRS e-file provider program. Mr. Barr formerly served on the Commissioner's Advisory Group, the Information Reporting Program Advisory Committee, and the Electronic Tax Administration Advisory Committee. **(Taxpayer Services Subgroup)**

**Joseph Bender** – Mr. Bender is Partner with Difede Ramsdell Bender PLLC in Washington, D.C. Bender has practiced federal tax law for nearly 30 years. Over the last 15 years, his practice has focused on investments by tax-exempt organizations, particularly leveraged and unleveraged investments, unrelated



business income tax, unrelated debt-financed income, and real estate investment trusts (REIT). **(Tax Exempt & Government Entities Subgroup)**

**Andrew Bloom** – Mr. Bloom is the Head of Tax Strategy at Golub Capital, a SEC-registered investment advisor and international asset manager. He advises on tax issues for investors, general partners, large partnerships, foreign corporations, and business development companies. He also manages substantive tax issues, including investment fund structuring, financial product planning, international tax planning, FDAP and FATCA withholding and tax treaty planning and compliance. Previously, he was a partner at Dechert LLP in New York. **(Large Business and International Subgroup)**

**Elizabeth Boonin** – Ms. Boonin is a CPA and Managing Member at Sound Accounting in Smithtown, NY and co-founder of Halcyon Still Water LLC in Red Bank, NJ. In 2013, Ms. Boonin started a full-service public accounting firm offering individual and business tax services, representation in IRS matters, and business valuations for mergers and acquisitions. In 2020, she co-founded a technology-based company providing automated tax preparation and third-party income verification aimed at leveraging technology in such a way that safeguards client information and reduces manual data entry for tax professionals and lending institutions. Prior to these ventures, she served as a VP of Global Markets Financing & Services with Bank of America/Merrill Lynch specializing in equity derivatives. **(Taxpayer Services Subgroup)**

**Beatriz Castaneda** – Ms. Castaneda is the Director of Tax Information Reporting at Coinbase Inc., based in Parker, CO. Ms. Castaneda focuses on tax information reporting for traditional services and digital assets, advising on tax rules and assesses potential risks. Her team develops information reporting policies for Coinbase and its affiliates. She drafts guidance and protocols for internal use as well as customer communications related to tax reporting obligations. Ms. Castaneda served on the Information Reporting Program Advisory Committee from 2014 to 2016. **(Information Reporting Subgroup)**

**Sam Cohen** – Mr. Cohen is Government Affairs/Legal Officer with the Santa Ynez Band of Chumash Mission Indians, a federally recognized Indian tribe. He advises the tribe and its members on the application of federal, state and tribal laws. He has worked with the IRS Indian Tribal Governments Office on a notice for draw-down loans and a notice for refunding tribal government bonds. Mr. Cohen has also worked on a \$93 million Tribal Economic Development Bond (TEDB) issuance for a new hotel tower and parking garage. He is a member of the General Welfare Exclusion Subcommittee of the Treasury Tribal Advisory Committee. **(Tax Exempt & Government Entities Subgroup)**

**Alison Flores** – Ms. Flores is Manager - Tax Institute with H&R Block. She is a tax attorney with over 15 years of experience. She supplies guidance on complex tax areas to tax professionals and responds to their feedback and questions. She helps cross-functional teams understand and implement changes that affect taxpayers. Her team works to understand systemic tax administration challenges, finds opportunities to bring awareness to those challenges and proposes solutions. She leads the internal research tool for H&R Block delivering tax research materials on an online research platform. She has a deep understanding of issues facing individual and small business taxpayers and knowledge of how refundable credits and other tax benefits have changed over the years. Flores holds a Bachelor of Arts in English and History from Bethel College and a Juris Doctorate from the University of Kansas School of Law. Flores works with tax professionals and the tax preparation industry. **(Chair, Taxpayer Services Subgroup)**

**Christine Freeland** – Ms. Freeland is President of Christine Z. Freeland, CPA PC, in Chandler, Arizona. Freeland has volunteered tax services at both the local and state levels. At the national level, she has served as president of the National Society of Accountants (NSA). Freeland was also the NSA presenter for the IRS Nationwide Tax Forum in 2020 and 2021. She also works with the Arizona Association of Accounting and Tax Professionals and has developed continuing education events for IRS Tax Security Awareness Week. Freeland also teaches Circular 230 Ethics annually and participates in roundtables. **(IRSAC Vice Chair and Small Business/Self-Employed Subgroup)**

**Steven Grieb** - Mr. Grieb is the Senior Compliance Counsel at Arthur J. Gallagher & Co. in Rolling Meadows, IL. Mr. Grieb has 25-plus years of experience working directly with companies that sponsor qualified and non-qualified retirement plans. His work deals significantly with ERISA and fiduciary duties, as well as with helping plan sponsors and service providers understand and comply with the IRC requirements. He assists retirement plan clients with corrections under Rev. Proc. 2021-30 and elective deferral errors. More recently, he has daily helped clients navigate the rule changes from SECURE and SECURE 2.0, like the many optional provisions that require plan sponsors to think through the best plan design for their specific work force. **(Tax Exempt & Government Entities Subgroup)**

**Aidan Hunt** – Mr. Hunt is a recent graduate of the University of North Carolina – Chapel Hill in North Carolina. Hunt holds a Bachelor of Arts degree in computer science and linguistics. He has volunteered as a tax preparer through the VITA program, where he obtained an advanced-level tax law certification and prepared returns for families and individuals. Hunt is passionate about helping the IRS provide accurate information to individuals and helping clients feel more aware of their tax liabilities. **(Small Business/Self-Employed Subgroup)**

**Jodi Kessler** – Ms. Kessler is the Director of Tax and Global Operations at MIT. Ms. Kessler has over 15 years of experience in higher education focusing on all aspects of taxation, including federal, state, local and international filing rules and requirements; gifts to and from a university; rules on withholding and reporting of all types of payments made by a university; and providing information on entity creation and dissolution. She has collaborated successfully with several departments to advise on tax rules and informational reporting at universities including The Ohio State University and Harvard University. At the Massachusetts Institute of Technology (MIT), she analyzed reporting and developed improved processes for reporting payments including employee compensation, service and non-service scholarships and fellowships, independent contractors and foreign recipients; she has developed trainings on the tax implications and reporting requirements of payments MIT issues to both U.S. tax residents and nonresidents.

Ms. Kessler is a member of the National Association of College & University Business Officers (NACUBO). **(Tax Exempt & Government Entities Subgroup)**

**Mason Klinck** – Mr. Klinck is the VITA Site Manager for Making Opportunity Count (MOC). He is an EA with 20 years of experience as a tax preparer. Formerly an agent for the IRS and a tax shelter auditor for the California Franchise Tax Board, he has worked with law and CPA firms in return preparation, collections, audits, appeals, innocent spouse relief and U.S. Tax Court petitions. As the VITA manager for his community agency, he supervises the preparation of tax returns for low-income taxpayers and represents distressed taxpayers before the state and the IRS. He has volunteered for Low Income Taxpayer Clinics in California, Vermont, and Massachusetts. Fluent in several languages, Klinck holds both a Bachelor and Master of Arts in Modern Languages from Oxford University, a Master of Business Administration from Boston College, and a Master of Science in Taxation from California State University, East Bay. Klinck serves on the Commissioner's Advisory Council of the Massachusetts Department of Revenue and is President of the Massachusetts Society of Enrolled Agents. **(Taxpayer Services Subgroup)**

**Anthony Massoud** – Mr. Massoud is Vice President of Corporate Finance and Tax with Van Metre Companies in Fairfax, Virginia. Massoud began his tax career at a CPA firm, working with high-net-worth individuals and international businesses. He has also served as a Tax Manager for a real estate company, managing over 200 partnership returns, in addition to trusts, foundations, and high-net-worth individual tax returns. Massoud has lived around the world, including in the Democratic Republic of Congo, France, Saudi Arabia, and Bahrain. **(Large Business and International Subgroup)**

**Susan Nakano** – Ms. Nakano is Senior Manager of Corporate Tax with Discover Financial Services in Riverwoods, Illinois. Nakano is experienced in operations, audit, risk and information technology. She helps internal business partners develop tax-compliant processes and is an expert in federal and state tax codes, as well as regulations and guidance requirements. Nakano works in information

reporting, focused on reporting for a bank depository and lending institution as well as for credit card settlements. **(Information Reporting Subgroup)**

**Annette Nellen** – Ms. Nellen is Professor of Accounting and Taxation and MST Program Director at San Jose State University. Nellen is a CPA and attorney and is active in the tax sections of the AICPA (including former chair of the Tax Executive Committee), ABA (chair of the Tax Policy & Simplification Committee), and California Lawyers Association. She is the recipient of the 2013 Arthur J. Dixon Memorial Award given by the Tax Division of the AICPA, the highest award given by the accounting profession in the area of taxation. Nellen has written numerous tax articles and is a co-author/co-editor of four tax textbooks. She is a frequent speaker at conferences and education programs for tax professionals focusing on tax developments, property transactions, digital assets, tax research, ethics, tax reform and tax policy and has testified several times before various legislative committees and tax reform commissions on tax policy and reform. Prior to joining SJSU in 1990, she worked at the IRS (revenue agent and lead instructor) and a Big 4 CPA firm. **(IRSAC Chair and Small Business/Self-Employed Subgroup)**

**Jeffrey A. Porter** – Mr. Porter is Member/CPA with Porter & Associates CPAs, PLLC. He is a CPA with over 40 years of experience preparing business and individual tax returns. His firm represents small- to medium-sized businesses and high net worth individuals spread across a wide spectrum of industries. He has been active in the American Institute of Certified Public Accountants for over 30 years, with prior service on the Board of Directors, its Governing Council and chair of its Tax Executive Committee. He served on the Steering Committee for the AICPA National Tax Conference for 20 years and served as Chair of the Conference for over 10 years. In 2016, he received the Arthur J. Dixon Memorial Award, the highest honor bestowed by the accounting profession in taxation. He has testified before the U.S. House of Representatives and the U.S. Senate five times on tax related matters. Porter holds a Bachelor of Business Administration from Marshall University and a Master of Taxation from the University of Tulsa. Porter represents small and medium-sized businesses, and he is a member of the

AICPA and the West Virginia Society of CPAs. **(Chair, Small Business/Self-Employed Subgroup)**

**Dawn Rhea** – Ms. Rhea is Partner for Tax Services at Weaver focusing her practice on green and renewable energy credits, tax controversy, tax consultancy and quality risk management. She helps lead Weaver’s Inflation Reduction Act federal non-fuel credit initiatives advising on production, investment, carbon sequestration, clean hydrogen, advanced energy projects, credit monetization, base rate enhancements, and structuring. Ms. Rhea represents taxpayers before the IRS during all stages of examination and appeal process, as well as Private Letter Rulings and other taxpayer relief. Previously, Ms. Rhea served as Chief Legal Office for Aureus Finance Group, LLC, where she advised principals on legal and financial matters regarding investment opportunities and the overall ecosystem of intended acquisitions, investments, and financings. She was also a National Tax Director with Moss Adams, LLP representing corporations, S corporations and partnerships in merger and acquisition transactions ranging from \$50 to \$700 million. She was leader in the tax controversy, QSBS, and transaction cost practices. Ms. Rhea is a member of the California Bar, the New York Bar, the Texas Bar, and the American Bar Association (Section of Taxation). She is a Certified Public Accountant in Louisiana and Texas. **(Large Business & International Subgroup)**

**Brayan Rosa-Rodriguez** – Mr. Rosa-Rodriguez is Executive Director of the Instituto del Desarrollo de la Juventud (Youth Development Institute) based in San Juan, Puerto Rico. Rosa-Rodriguez successfully executed a tax credit campaign focused on Latino taxpayers in key states such as California, Arizona, Texas, Florida and Puerto Rico. This campaign leveraged the American Rescue Plan improvements to the Child Tax Credit and Earned Income Tax Credits. He has also supported the production and dissemination of research related to economic policy, poverty, tax credits, and program implementation, as well as public policy briefs and educational materials regarding tax policy and the job market. Rosa-Rodriguez coordinates these advocacy efforts with local, state, and national partners. **(Taxpayer Services Subgroup)**

**Lawrence A. Sannicandro** – Mr. Sannicandro is a Partner at Pillsbury Winthrop Shaw Pittman LLP in New York. Mr. Sannicandro has significant experience representing small businesses and self-employed taxpayers in audits, administrative appeals, investigations, collection matters, and litigation in federal trial and appellate courts. He was co-counsel to the taxpayers in a case concerning the procedural requirements of section 6751(b)(1) that affected the IRS's approach to assessing penalties. He is a principal draftsman of written comments from the ABA Tax Section to the IRS on issues, including changes to Schedule UTP, the closure of the IRS's voluntary disclosure program, and the proposed elimination of attorney positions from OPR. He has been nationally recognized for co-founding the Exonerees' Tax Assistance Network, which provides tax-related assistance that he and others provided to wrongfully incarcerated individuals. **(Small Business/Self-Employed Subgroup)**

**Jon Schausten** – Mr. Schausten is the Director of Payroll, Finance Operations, with Group 1001 Life & Annuity. He is a Certified Payroll Professional with over 20 years of payroll experience with union, multi-state and international payrolls. He oversees payroll, time and attendance, HRIS and HR Shared Services. He managed payroll for expatriate associates including foreign income and tax returns. He assisted the Social Security Administration in its five-year modernization project articulating the needs of payroll professionals in using online services. He is a member of American Payroll Association (APA) and was named the 2020 American Payroll Association Payroll Man of the Year. He has received the 2017 Prism Award for Management. He is currently the Vice President of APA and serves as Co-Chair of the Government Relations Task Force for IRS Issues and Co-Chair of Social Networking Committee. Schausten holds a Bachelor of Business Administration in Human Resources Management from Marian University. Schausten represents the information reporting community and payroll industry. **(Information Reporting Subgroup)**

**Tara Sciscoe** – Ms. Sciscoe is a Partner at Ice Miller, LLP where she is a member of the Employee Benefits group. She has 28 years of experience advising employers, plans and trusts with respect to the design and compliance of their

employee benefit programs. Ms. Sciscoe has a national practice in representing public pension systems and governmental and tax-exempt colleges, universities, university systems, and school corporations with respect to their unique benefit issues, which frequently involve multiple interrelated plans on the state and institutional level. She is general counsel to the seventh largest denominational church plan in the U.S., which administers retirement plans and deemed IRAs for churches across the country, and regularly advises church and church-related organizations on employee benefit matters. Ms. Sciscoe is an active member of the National Association of College and University Attorneys and the Church Alliance Core Lawyer Working Group, and frequently writes and presents for these and other groups. She is chair of Ice Miller's Higher Education practice and chair of the Retirement Plan Committee. She holds a J.D. from the University of Michigan and a Bachelor of Arts from Duke University. Sciscoe represents tax-exempt organizations and employee plans. **(Tax Exempt & Government Entities Subgroup)**

**Peter Smith** – Mr. Smith is a Senior Manager at Artisan Partners Limited Partnership in Milwaukee, WI. Mr. Smith is a tax specialist with over 17 years of financial services industry experience in both public accounting and in-house tax practices focusing on tax compliance and the application of U.S. and international tax law for portfolio managers, investment funds, and investors. He has a broad range of expertise on tax issues that impact the investment fund community and has worked extensively in both the research and compliance of tax law for U.S. and non-U.S. regulated and non-regulated funds, securities, and investors. Mr. Smith's firm provides multiple investment strategies across a wide variety of investment vehicle types. **(Information Reporting Subgroup)**

**Cory Steinmetz** – Mr. Steinmetz is an IRS Compliance Officer and Principal Assistant Attorney General in the Office of the Ohio Attorney General in Columbus, OH. Mr. Steinmetz has worked in government taxation for the last nine years and is the Office of the Ohio Attorney General's main contact with the IRS. Prior to 2020 he was an attorney with the Ohio Department of Taxation. He manages IRS compliance for the Office and litigates tax issues in state and bankruptcy courts



across the country; representing governmental creditors in consumer and corporate bankruptcy cases. Mr. Steinmetz also serves as subject matter expert for individual and business tax issues. He is often consulted on state legislation where federal law intersects and ensures current policies and procedures are in alignment with legal requirements related to federal tax or bankruptcy code. **(Tax Exempt & Government Entities Subgroup)**

**Hussein Tarraf** – Mr. Tarraf is President of Tarraf & Associates, PC, in Dearborn, MI. Mr. Tarraf has been in public accounting for over 20 years providing tax advisory and assurance services primarily to small-medium size businesses and high net-worth individuals, and has worked in the areas of accounting, audit, consultation, business planning and taxation within several firms. Mr. Tarraf, a Certified Public Accountant (CPA) and a Certified Fraud Examiner (CFE) is an active member of the American Institute of Certified Public Accountants (AICPA), the Michigan Association of Certified Public Accountants (MICPA), the Association of Certified Fraud Examiners (ACFE) and the National Association of Tax Professionals (NATP). Mr. Tarraf has worked extensively in the area of U.S. international tax reporting and compliance with the preparation of the U.S. Federal Forms 5471, 5472, 8865, 8992, 1116, 1040NR, 2555, 8938, and FinCen 114 among other Forms, and has guided hundreds of clients in connection with offshore assets, FBAR and FATCA reporting obligations. In addition to practicing public accounting, Mr. Tarraf is an Associate Professor of Accounting and the Director of Accounting and Finance Program at Madonna University. Mr. Tarraf holds a Doctorate of Business Administration degree from Lawrence Technological University, an MBA from Wayne State University, and a B.A. in Accounting from The Lebanese University. **(Taxpayer Services Subgroup)**

**Wendy Walker** – Ms. Walker is V.P. – Regulatory Affairs (RegTech) with Sovos, a global tax software company. She helps ensure customers (including financial institutions and insurers, multinational corporations, payment processors, gig platforms and more) remain compliant with their withholding and information reporting obligations. A respected industry voice, Ms. Walker appears regularly in business and industry publications such as Law360, Bloomberg, and Forbes. She

previously worked in financial services for over 15 years at J.P. Morgan Chase and Zions Bancorporation leading tax operations and compliance teams focused on Form W-8 and W-9 and withholding compliance, and information reporting for more than 12 million Forms 1098, 1099-INT, 1099-A, 1099-C, 1042-S, 1099-MISC and more. Ms. Walker is a member of the Council for Electronic Revenue Communication Advancement (CERCA), National Association of Computerized Tax Processors (NACTP), and is the chair of the Risk Committee 1099-K Subgroup at the Electronic Transactions Association (ETA). Walker holds a Bachelor of Science in Management from Franklin University and a M.B.A. from Ohio Dominican University. **(Chair, Information Reporting Subgroup)**

**Sean Wang** – Mr. Wang is a Director with Charles Schwab's Information Reporting Policy & Compliance group, where he advises and supports internal business line partners on information reporting and withholding compliance, corporate digital projects, and implementation of new or changes of information reporting and withholding rules. He was previously a Senior Manager with EY where he advised and assisted banking, insurance, and asset management clients on domestic reporting and withholding issues (i.e., Forms 1099 and backup withholding), nonresident alien reporting and withholding issues (i.e., Forms 1042-S and section 1441 withholding), the Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS). Mr. Wang received a Bachelor of Business Administration in Accounting from the University of Massachusetts at Amherst. He is a Certified Public Accountant and a member of the AICPA and the Massachusetts Society of CPAs. **(Information Reporting Subgroup)**

**Lucinda Weigel** – Ms. Weigel is a CPA, EA, and Owner of Weigel Tax & Accounting Services LLC in Vienna, VA. Ms. Weigel recently served on the Taxpayer Advocacy Panel where she chaired its Tax Forms and Publications Committee. She owns and manages a small tax accounting firm specializing in helping elderly and disabled clients manage their tax matters and financial affairs. She primarily focuses on individual and fiduciary (estate and trust) returns, though has some business clients and clients with information reporting requirements. She

also represents clients for the IRS and state tax authorities to help resolve issues.  
**(Taxpayer Services Subgroup)**

**Katrina Welch** – Ms. Welch has over 25 years of tax, management, and strategic decision-making experience. As Vice President – Tax for Solera, the global leader in vehicle life cycle management, she delivers strategic tax planning by working closely with the business to drive operational initiatives, as well as leading tax policy, controversy, compliance, and reporting. Previously, Ms. Welch led the global tax function at Texas Instruments. She also served as the Tax Executives Institute (TEI) 2019-2020 International President and now on the TEI Board of Directors, as well as current Secretary for the Texas Federal Tax Institute. **(Chair, Large Business and International Subgroup)**

**Thomas Wheadon** – Mr. Wheadon is currently the Head of International Tax and Transfer Pricing at MAHLE, a German-owned manufacturing company, in Farmington Hills, MI. In this role, he is responsible for international tax calculations, modeling, and reporting related to BEAT and GILTI, as well as managing transfer pricing in accordance with OECD guidelines. Previously, he worked in a large public accounting firm as an International Tax Manager. He has extensive experience with a diverse range of clients, from individuals involved with PFICs to multinational corporations with numerous foreign subsidiaries. His expertise includes managing international compliance projects, calculating GILTI, foreign tax credits, and FDII, and providing strategic advice on cross-border transactions and structuring. Mr. Wheadon is an attorney admitted in Michigan, and a member of the Tax Executives Institute. **(Large Business and International Subgroup)**

**Brian Yacker** – Mr. Yacker is Partner, Nonprofit Services, at Baker Tilly in Irvine, California. Yacker's career has focused on working with tax-exempt organizations and he currently serves over 1,000 different nonprofits, including public charities, private foundations, hospitals, higher education institutions, religious organizations, social clubs, business organizations, and labor organizations. He is currently a member of the AICPA Exempt Organization (EO) Tax Technical Resource Panel, a Board member for the TE/GE EO Council, and is on the

National Association of State Charity Officials (NASCO) Public Day Planning Committee. **(Chair, Tax Exempt & Government Entities Subgroup)**

**Nicholas Yannaci** – Mr. Yannaci is a Director in Group Tax at UBS in Stamford, CT. Mr. Yannaci is responsible for IRS correspondence (IRS audits, abatement requests, liens and notices of default). He reviews prospectuses to ensure accurate disclosures and works closely with Operations to ensure accurate reporting. He is a member of the QI periodic review team as the liaison between the external reviewer and UBS. He advises on all manners of U.S. reporting and withholding along with OECD's Common Reporting Standards. He reviews Forms 945, 1042, 1099, 1042-S, W-8 and W-9. **(Information Reporting Subgroup)**