

The Impact of “Big Data” on IRS Civil and Criminal Tax Enforcement

MUCH HAS BEEN WRITTEN over the last year concerning the lack of funding for the Internal Revenue Service and what it means for tax enforcement.¹ It is well established that for every dollar spent on tax enforcement, at least four dollars are brought into the U.S. Treasury.² This makes a very compelling case for spending more—not less—on tax enforcement, yet the IRS enforcement budget has been decreasing over the last 10 years. While funding for the IRS will continue to be a challenge, the “reports of [the IRS’s] death are greatly exaggerated.”³

Faced with decreasing enforcement budgets, the IRS has recognized it must employ force multipliers to achieve its compliance goals. One of the key strategies will be the use of “big data”—data the IRS already has and data that is publicly available. As IRS embraces the world of big data to enhance tax compliance and enforcement, there are various challenges tax practitioners will likely face in the future.

Budget Cuts

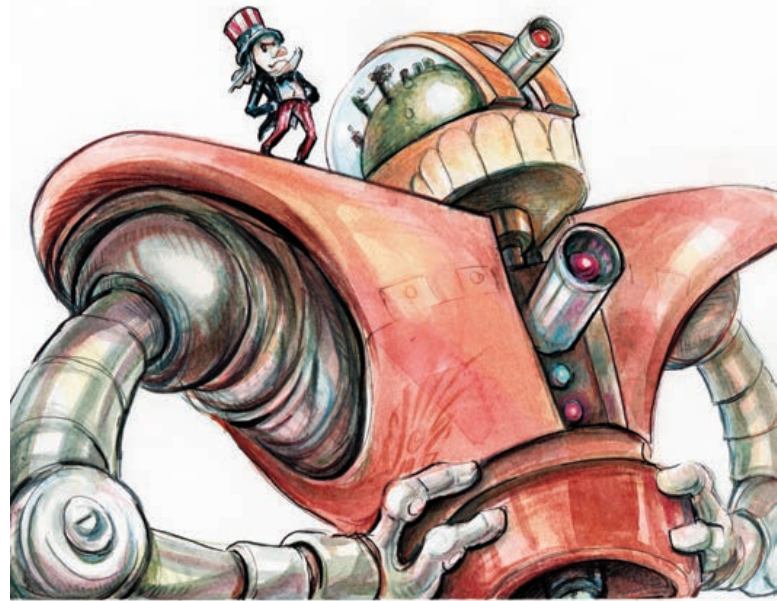
Since 2010, the IRS’s enforcement budget has been cut by \$1.5 billion, adjusted for inflation. This is a decrease of 23 percent.⁴ Over the same time period, the IRS staff has decreased by more than 17,000.⁵ (This is about the same number of employees working for Uber and Netflix combined.) Cuts since 2010 have led to approximately a one-third reduction in enforcement staff.⁷ The number of Criminal Investigation agents has been reduced by 20 percent since 2010.⁸

The IRS currently employs roughly the same number of auditors as it did in the early 1950s.⁹ The U.S. economy, however, is seven times larger than it was then and the tax laws are much more complex.¹⁰ Of even more concern is the decline in federal tax receipts as a percentage of Gross Domestic Product. During the recent economic recovery, tax receipts have not reached the percentage of GDP achieved in previous bull markets.¹¹

During these heavy staff reductions, new investigations into nonfilers are down 74 percent from 2013 to 2017.¹² This decrease has been estimated to cost the Treasury nearly \$3 billion annually.¹³ Criminal investigations also have been steadily decreasing. There were 2,886 investigations in 2018, a decrease of 15 percent from 2016 and 46 percent from 2013.¹⁴ Cases recommended for prosecution, 2,130, in 2018 are down 22 percent from 2016 and down over 50 percent from 2013. Indictments, which number 2,011 in 2018, are down 27 percent from 2016 and 48 percent from 2013.¹⁵

IRS audits of tax returns dropped nearly 40 percent from fiscal year 2011 to 2017.¹⁶ As a result, the audit rate declined to 0.5 percent in 2017. According to anecdotal reporting, audits that do take place are less intensive than in previous years because the lack of staff leads agents to feel pressured to close audits quickly and move on to the next one.¹⁷

The average annual tax gap is estimated to be \$458 billion¹⁸



but is likely much higher. One estimate for the total shortfall of uncollected taxes—taxes that taxpayers acknowledge are owed but unpaid—stands at an astronomical \$95 billion.¹⁹ Billions of dollars of back taxes owed slip through the IRS’s hands due to the running of the 10-year statute of limitations on collecting back taxes because of a lack of resources. In 2017 alone, over \$8 billion dollars were lost forever because of the statute of limitations.²⁰

In addition to a reduced capacity to collect taxes, another significant consequence of a shrinking IRS enforcement budget is that deterrence decreases while tax avoidance and evasion increase. The cop on the beat is one of the most effective deterrents to crime, and, as they say, when the cat’s away, the mice will play. Why would a taxpayer be concerned with the prospect of an IRS examination if neither they—nor anyone they know—has ever had the experience?

The cat has not really gone away, however. It has been busy hunting down and exploring ways to use big data. The budget cuts to the IRS have forced it to do more with less. Already, in 2015, the IRS was being hailed as a model of efficiency among Washington bureaucracies. It collects more taxes every year than ever before at a lower cost per dollar collected.²¹ The cost of collecting taxes has actually fallen 29 percent since 2012.²²

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A key force multiplier the IRS uses is big data technology, and the IRS has a long history of using technology in its important mission. As early as the late 1950s, the IRS was using computers to select returns for audits.²³ This was followed by the adoption of technology to automate audit selection as well as collect data. In the 1990s, the IRS began developing the Compliance Data Warehouse (CDW), which unified multiple databases of information. The CDW enabled the IRS to run the combined data through algorithms to perform predictive analysis, including identifying fraud in areas such as the earned income tax credit and identifying trends such as the tendency for college students to fall behind on tax payments.²⁴ Through the 2000s, further advances were made in automating and streamlining processes. An automated under reporter program was created to match 1099 and W-2 forms to reported income.²⁵ Automated notices were sent out if discrepancies were found. Recently appointed IRS Commissioner Charles Rettig has stated publicly that one of his top priorities is updating the IRS's technology.²⁶ This will be not only important for taxpayer service but also critical to tax enforcement.

Data Analytics

Every year, technological advancements seem to accelerate exponentially. One area in particular that has seen tremendous progress is the field of data analytics. Data mining, machine learning, and artificial intelligence (AI)—once a matter of science fiction—have emerged as powerful and useful tools. However, the amount of data available to analyze also has increased dramatically. At current rates, 2.5 quintillion bytes of data are created every day. Ninety percent of the world's digital data has been created in the last two years.²⁷

The IRS, recognizing the potential in data analytics, is attempting to use big data strategies to increase the efficiency of its collection and enforcement efforts and to find new instances of fraud to counteract the effects of a diminished budget. The IRS's focus on data is reflected in the jobs posted on its website: AI analysts, statisticians (including mathematical statisticians), and computer research analysts are all in demand.²⁸

The IRS is uniquely capable of leveraging the use of big data because it is a veritable treasure trove of data. Data available to the IRS include prior tax and information returns, data collected from third parties, and public and commercial data. Tax returns are full of valuable financial

data points and information. Public data include anything from social media postings to city and state records. Commercial data can include credit reports, credit card processor data, and marketing data.

International Taxation Impact

Recent changes in the international taxation landscape have also led to large infusions of data. The Foreign Account Tax Compliance Act, passed in 2010,²⁹ requires foreign financial institutions to report the foreign assets held by their U.S. account holders.³⁰ In addition, the United States is a member of the Organization for Economic Cooperation and Development (OECD) and, as a result, receives information from fellow OECD countries as part of mutual reporting requirements.

According to a former senior adviser to the IRS in 2013:

The IRS has brought in private industry experts to employ similar digital tracking—but with the added advantage of access to social security numbers, health records, credit card transactions and many other forms of information that marketers do not see. Private industry would be envious if they knew what our models are.³¹

This ecosystem of data is only growing, presenting both opportunities and challenges for tax enforcement. According to the IRS, from 2007 to 2017, data volume has increased by a factor of 100.³² In 2018 alone, the IRS Criminal Investigation (CI) division collected 1.67 petabytes of data.³³ The IRS has cell phone tracking technology, which can be used to collect phone conversations, text messages, and location data from cell phones to combat noncompliance.³⁴ Web crawlers employed by the IRS also continuously pull data from the Internet. To deal with this ocean of data, the agency said it plans to hire 250 additional agents and 10 data specialists.³⁵

The IRS announced in September 2018 a new contract with Palantir—a company owned by famed Silicon Valley investor Peter Thiel and one of the U.S. government's top outside contractors in the field of data analytics, including the Department of Defense and the Central Intelligence Agency.³⁶ The IRS has committed to pay Palantir close to \$100 million over the next seven years. Tax evaders would likely characterize this as an unholy alliance, but it amounts to good law enforcement. The IRS now will have access to more public data and the means to utilize that data in its enforcement efforts—a means to connect the billions of dots.

The IRS is already employing these data

and has had some impressive early results. In its CI division's 2018 annual report, the IRS points out that it found almost \$10 billion in criminal tax deficiencies in its fiscal year 2018—up from approximately \$2.5 billion in 2017, thanks in part to the exploitation of big data.³⁷ According to Don Fort, chief of the IRS CI division, “We prioritized the use of data in our investigations in fiscal 2018. The future for CI must involve leveraging the vast amount of data we have to help drive case selection and make us more efficient in the critical work that we do. Data analytics is a powerful tool for identifying areas of tax non-compliance.”³⁸

The IRS CI division has already begun to embed data analysts in its field offices and train its special agents on the use of data tools like Palantir. According to Kristina O'Connell, CI special agent in charge (Boston), “[t]here is no excuse for an agent not to be able to manage big data anymore.”³⁹ Speaking at a May 16, 2019 criminal tax conference at Quinnipiac University School of Law in North Haven, Connecticut, O'Connell revealed that CI is creating a pilot program to install investigative support groups staffed with data analysts who are not special agents in each of CI's field offices. “We've never had that before [and] those investigative analysts can review the data in their area and farm out cases to the agents that are staffed in the area,” she said.⁴⁰ While data analysts are in a different job series than CI's normal special agents, they work shoulder to shoulder with those investigators, she said.⁴¹

How IRS Uses Data

To utilize the data available to it, in 2011, the IRS created the Office of Compliance Analytics (OCA) to “both develop and accelerate strategic data-driven compliance initiatives as well as strengthen the Service's analytic problem-solving capability.”⁴² In 2016, OCA was merged into the Research, Applied Analytics and Statistics Division (RAAS).

Currently, four divisions of the IRS are engaged in data mining: IRS CI, the IRS Small Business/Self-Employed Division, the IRS Wage and Investment Division, and RAAS. These divisions have access to several data mining applications: Investigative Data Examination Application (IDEA)—formerly known as Investigative Data Analytics, Lead and Case Analytics (LCA), Return Review Program (RRP), Financial Crimes Enforcement Network (FinCEN) Query, and Compliance Data Warehouse (CDW).⁴³ It should be anticipated that with the new robust contract with Palantir, these existing data mining operations will receive

some new enhancements.

The IDEA and LCA divisions help identify patterns of illegal activity by analyzing large sets of data through a single access point. This helps to generate leads for agents to investigate.

The RRP uses machine learning algorithms to “score” returns on their likelihood to be fraudulent by uncovering patterns in data associated with fraud. In 2016, RRP generated over 693,000 identity theft leads, with a 62 percent accuracy rate and over 103,000 other nonidentity fraud leads with a 49 percent accuracy rate.⁴⁴

The FinCEN Query is an online database search engine that allows analysts to search for specific entity names and term combinations across FinCEN records.⁴⁵ The system provides access to currency and other Bank Secrecy Act reports, such as the Currency Transaction Reports, Foreign Bank and Financial Account Reports, and Suspicious Activity Reports.⁴⁶ The information provided can be used to investigate noncompliance with tax and other reporting obligations. There are reports in which the IRS will begin to use AI algorithms to enhance the use of these existing databases. The days when millions of pieces of paper sat in warehouses undisturbed and forgotten are over.

The CDW focuses on business entities. It helps to identify relationships of corporate flow-through entities, fabrication and pyramiding, as well as preparer interactions. Over a decade ago, the IRS was using the CDW to discover cheating with the earned income tax credit and small-business tax shelters.⁴⁷

Third-Party Software and AI

The IRS has heavily invested in third-party data analytics software to utilize its vast databases.⁴⁸ The technology allows the government to make connections between many data points and initiate investigations. “As financial crime has evolved and proliferated around the world, so have IRS Criminal Investigation special agents and their abilities to track the proceeds of financial crime,” said Commissioner Rettig. “CI uses cutting-edge technology combined with sophisticated investigative work to bring the most impactful cases that affect tax administration.”⁴⁹

As early as 2014, rumors circulated that the IRS was scrutinizing social media accounts to develop profiles and identify candidates for review. Recently, the IRS issued a request for information on tools to assist in collecting and tracking social media data.⁵⁰

Regarding IRS’s embrace of AI, the

United States has information exchange agreements with many countries around the world, and one product of these agreements is the exchange of tremendous amounts of data between countries. These data are often not in English, which prevents them from being readily usable to the IRS. The IRS is looking into AI and how it could be used to translate those documents in a cost-effective way.⁵¹

The IRS is also looking at utilizing AI for customer service. The IRS receives an average of 116 million calls from taxpayers each year.⁵² In 2016, calls handled by the IRS cost an average of \$42, while those answered through automation cost \$0.50.⁵³ The ability to automate calls would lead to large cost savings. The IRS is exploring the use of virtual assistants, similar to Amazon’s Alexa, to answer calls.⁵⁴

The use of data analytics by the IRS is about to get real for the country’s largest corporate taxpayers. The IRS’s Large Business and International Division (LB&I) on May 15 launched the large corporate compliance (LCC) program, which implements a new method for selecting the largest corporate cases. A May 16 IRS release states:

The LCC program further improves LB&I’s ability to efficiently focus its resources on noncompliance. LCC works in tandem with LB&I agents and examiners who apply their experience and expertise in undertaking compliance actions and determining compliance treatment streams of the biggest and most-complex corporate taxpayers. Each enhances the other.⁵⁵

According to the release, which highlights that pointing criteria include “gross assets and gross receipts,” the LCC program “employs automatic application of the large case pointing criteria to determine the LCC population.”⁵⁶ Explaining that the process previously was handled “on a manual, localized basis,” the release states that automation will allow “a more objective determination of the taxpayers that should be part of the population.”⁵⁷ When the population has been defined, data analytics can then assist in identifying returns that may represent the greatest compliance risk.

States Join In

The IRS is not the only tax agency utilizing data analytics. States also have begun to incorporate big data in their tax collection strategies. California, for example, is working on its Enterprise Data to Revenue (EDR) Project. Part of the Franchise Tax Board’s Tax Systems Modernization effort initiated in 2011, EDR focuses on increasing effi-

ciency and revenues. Currently underway, EDR Phase 2 will entail “utilizing new data and dynamic modeling strategies to proactively approach noncompliant behavior and to address the tax gap.”⁵⁸

The 2017 Tax Cuts and Jobs Act limited the state and local taxes deduction to \$10,000.⁵⁹ As a result, many taxpayers in high-tax states such as New York are trying to claim residency in low-tax states, such as Florida. This has been blamed for the over \$2 billion revenue shortfall in 2018. As a result, these snowbirds are facing increased scrutiny from state tax agencies. New York has been tracking taxpayers’ cellphone records to verify the location of calls and monitoring social media accounts to make sure that wealthy earners are truly “domiciled” in Florida.⁶⁰

States are also honing their big data skills in the sales tax realm. Ever since the Supreme Court in *South Dakota v. Wayfair, Inc.* ruled that states could force online businesses without a physical presence in the state to collect sales tax, states have been scrambling to take advantage of the new potential revenue.⁶¹ Some states have contracted with technology firms to analyze data to identify retailers that are not registering for tax collection.⁶² The big data experience acquired in sales tax collection will likely be applied to other tax areas.

Changing Tax World

The big data tipping point has arrived. The combination of the vast amount of data available and advancements in processing power and data analysis has resulted in new and formidable tools in the IRS’s arsenal. The IRS, with its smaller budget, has begun using big data to drive efficiencies.

Big data and tax enforcement is just another example of digital disruption that has required companies and individuals both to react to the challenges it presents and to embrace its value. With the IRS accelerating its focus on data analytics, how should practitioners respond? The first thing practitioners should do is educate themselves on the IRS’s tools and practices. Forewarned is forearmed, so the more you know about new methods, the better equipped you will be to react to them.

The data the IRS may be relying on in many cases will provide predictive leads toward some noncompliance problems, not evidence or facts, per se, of noncompliance. Therefore, practitioners should try to ascertain early in the process if the examination or investigation is being driven by data analysis. This may not be easy as examining agents do not usually share such information, and obtaining informa-

tion under the Freedom of Information Act has its limitations.⁶³ The IRS, however, will recognize that data analytics can present false positives, and it may be appropriate in many circumstances to share with the tax practitioner the source of concern rather than spending thousands of man hours on a problem that is not there.

Practitioners may require the assistance of technology services to search public databases and ascertain a client's data profile in order to shadow the IRS—similar to the shadow investigations done in many complex tax investigations. Tax lawyers are familiar with hiring *Kovel* accountants⁶⁴ and other experts to assist them in investigations—it is now necessary to add data and AI experts. Knowing what the IRS may be looking at will be very important in determining how best to respond to an IRS investigation. It is a brand-new digital world out there, and the IRS is busy understanding and utilizing it to detect noncompliance. Everyone needs to get ready. ■

¹ Jesse Eisinger and Paul Kiel, *After Budget Cuts, the IRS' Work Against Tax Cheats Is Facing "Collapse,"* PROPUBLICA, Oct. 1, 2018, <https://www.propublica.org/article/after-budget-cuts-the-irs-work-against-tax-cheats-is-facing-collapse> [hereinafter Eisinger & Kiel].
² Prepared Remarks of John A. Koskinen, IRS Commissioner, Before the Urban-Brookings Tax Policy Center, Washington, D.C. (Apr. 8, 2015), available at <http://www.taxpolicycenter.org/sites/default/files/alfresco/publication-pdfs/2000180-prepared-remarks-of-irs-commissioner-before-tpc.pdf>.

³ The oft-heard expression, "Reports of my death have been greatly exaggerated" is a quotation of a sentiment expressed by Mark Twain, viz., "The report of my death was an exaggeration," in the *New York Journal*, June 2, 1897.

⁴ Compare INTERNAL REVENUE SERVICE DATA BOOK, 2017, available at <https://www.irs.gov/pub/irs-soi/1717databk.pdf> [hereinafter INTERNAL REVENUE SERVICE DATA BOOK, 2017] with INTERNAL REVENUE SERVICE DATA BOOK, 2010, <https://www.irs.gov/pub/irs-soi/10databk.pdf> (both sources last accessed May 16, 2019).

⁵ *Id.*

⁶ Samantha Murphy Kelly, *Inside Uber: How the company attracts top talent despite its reputation*, CNN Business, Feb. 22, 2017, <https://money.cnn.com/2017/02/14/technology/uber-corporate-culture/index.html>; #38 Netflix, FORBES, <https://www.forbes.com/companies/netflix/#645384168541> (last accessed Jun. 4, 2019).

⁷ See INTERNAL REVENUE SERVICE, SOI TAX STATS - PERSONNEL SUMMARY, BY EMPLOYMENT STATUS, BUDGET ACTIVITY, AND SELECTED TYPE OF PERSONNEL - DATABOOK TABLE 30, available at <https://www.irs.gov/statistics/soi-tax-stats-personnel-summary-by-employment-status-budget-activity-and-selected-type-of-personnel-databook-table-30> (last accessed Jun. 4, 2019) [hereinafter SOI TAX STATS].

⁸ Compare TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, TRENDS IN CRIMINAL INVESTIGATION'S ENFORCEMENT ACTIVITIES SHOWED IMPROVEMENTS FOR FISCAL YEAR 2010, WITH GAINS IN MOST PERFORMANCE INDICATORS (Ref. No. 2011-30-068) 21 (July 25, 2011), available at <https://www.treasury.gov/tigta/auditre->

ports/2011reports/201130068fr.pdf and DEPARTMENT OF TREASURY, IRS: CRIMINAL INVESTIGATION ANNUAL REPORT 2018 7, available at https://www.irs.gov/pub/irs-utl/2018_irs_criminal_investigation_annual_report.pdf (last accessed Jun. 4, 2019).

⁹ Compare SOI TAX STATS, *supra* note 7, and U.S. GOV'T PRINTING OFFICE, ANNUAL REPORT OF THE COMMISSIONER OF INTERNAL REVENUE FOR THE FISCAL YEAR ENDED JUNE 30, 1954 (1955), available at <https://www.irs.gov/pub/irs-soi/54dbfullar.pdf>.

¹⁰ BUREAU OF ECONOMIC ANALYSIS, U.S. DEP'T OF COMMERCE, NATIONAL DATA: NATIONAL INCOME AND PRODUCT ACCOUNTS, available at <https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=2#reqid=19&step=2&isuri=1&1921=survey> (last accessed Jun. 4, 2019).

¹¹ Office of Management and Budget Historical Tables, Table 1.2, <https://www.whitehouse.gov/omb/historical-tables> (last accessed May 16, 2019).

¹² TRENDS IN COMPLIANCE ACTIVITIES THROUGH FISCAL YEAR 2017, Treasury Inspector Gen. for Tax Admin. (Sept. 13, 2018), available at <https://www.treasury.gov/tigta/auditreports/2018reports/201830069fr.pdf>.

¹³ The Editorial Board, *A Gutted I.R.S. Makes the Rich Richer*, N.Y. TIMES, Dec. 25, 2018, available at <https://www.nytimes.com/2018/12/25/opinion/editorials/irs-audits-rich.html> (citing A SIGNIFICANTLY REDUCED AUTOMATED SUBSTITUTE FOR RETURN PROGRAM NEGATIVELY AFFECTED COLLECTION AND FILING COMPLIANCE, Treasury Inspector Gen. for Tax Admin. (Sept. 29, 2017), available at <https://www.treasury.gov/tigta/auditreports/2017reports/201730078fr.pdf>).

¹⁴ Compare INTERNAL REVENUE SERVICE CRIMINAL INVESTIGATION ANNUAL 2016 REPORT, available at https://www.irs.gov/pub/foiaig/ci/2016_annual_report_02092017.pdf with IRS: CRIMINAL INVESTIGATION ANNUAL REPORT 2018, available at https://www.irs.gov/pub/irs-utl/2018_irs_criminal_investigation_annual_report.pdf (both sources last viewed May 16, 2019) [hereinafter IRS: CRIMINAL INVESTIGATION ANNUAL REPORT 2018].

¹⁵ *Id.*

¹⁶ Compare INTERNAL REVENUE SERVICE DATA BOOK, 2017, *supra* note 4, with INTERNAL REVENUE SERVICE DATA BOOK 2011, available at <https://www.irs.gov/pub/irs-soi/11databk.pdf> (last viewed May 16, 2019).

¹⁷ Eisinger & Kiel, *supra* note 1.

¹⁸ The Tax Gap, IRS, <https://www.irs.gov/newsroom/the-tax-gap> (last accessed May 11, 2019).

¹⁹ Jesse Eisinger and Paul Kiel, *After Budget Cuts, How the IRS Was Gutted*, PROPUBLICA, Dec. 11, 2018, <https://www.propublica.org/article/how-the-irs-was-gutted>.

²⁰ *Id.*

²¹ Doyle McManus, *Republicans love to hate the IRS, but it's a model of efficiency*, L.A. TIMES, Mar. 31, 2015, available at <https://www.latimes.com/nation/la-oe-0401-mcmanus-irs-20150401-column.html>.

²² James Thorne, *Years of budget cuts shrink the IRS, and corporations are the big winners*, CNBC, May 12, 2018, <https://www.cnbc.com/2018/05/11/budget-cuts-shrink-the-irs-and-corporations-are-the-big-winners.html>.

²³ Stephen Mihm, *The IRS Really Needs Some New Computers*, BLOOMBERG, Apr. 17, 2018, <https://www.bloomberg.com/opinion/articles/2018-04-17/the-irs-computer-system-is-the-oldest-in-the-government>.

²⁴ Eric Lai, *Been audited lately? Blame the IRS's massive, superfast data warehouse*, COMPUTERWORLD, Mar. 22, 2008, <https://www.computerworld.com/article/2536160/business-intelligence/been-audited-lately-blame-the-irs-s-massive-superfast-data-warehouse.html> [hereinafter Lai].

²⁵ IRS HISTORICAL FACT BOOK: A CHRONOLOGY 1646-1992, IRS HISTORICAL STUDIES 235, Dep't of Treasury, IRS, available at https://www.governmentattic.org/5docs/IRS-HistoricalFactBook_1992.pdf.

²⁶ See, e.g., CCHTaxGroup, *Rettig Wants to Modern-*

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²⁷ Bernard Marr, *How Much Data Do We Create Every Day? The Mind-Blowing Stats Everyone Should Read*, FORBES, May 21, 2018, <https://www.forbes.com/sites/bernardmarr/2018/05/21/how-much-data-do-we-create-every-day-the-mind-blowing-stats-everyone-should-read/#3aac8fcc60ba>.

²⁸ Research & Analysis, IRS, <https://www.jobs.irs.gov/resources/job-descriptions/research-analysis> (last accessed May 13, 2019).

²⁹ Foreign Account Tax Compliance Act, Pub. L. No. 111-147, 124 Stat. 71, 97-117 (2010).

³⁰ For example, since 2014, the Canada Revenue Agency has shared more than 1.6 million Canadian banking records with the IRS. The U.S. has negotiated similar data sharing arrangements with nearly 100 countries. Elizabeth Thompson, *1.6 million Canadian banking records shared with IRS*, CBC, Jan. 23, 2019, <https://www.cbc.ca/news/politics/tax-fatca-u-s-canada1.4988135>.

³¹ Richard Satran, *IRS High-Tech Tools Track Your Digital Footprints*, U.S. NEWS & WORLD REPORT, Apr. 4, 2013, <https://money.usnews.com/money/personal-finance/mutual-funds/articles/2013/04/04/irs-high-tech-tools-track-your-digital-footprints>.

³² IRS Strategic Plan Fiscal Year 2018-2022, <https://www.irs.gov/about-irs/irs-strategic-plan> (last accessed May 17, 2019).

³³ Siri Bulusu, *Palantir Deal May Make IRS 'Big Brother-ish' While Chasing Cheats*, BLOOMBERG TAX, Nov. 15, 2018, <https://news.bloombergtax.com/daily-tax-report/palantir-deal-may-make-irs-big-brother-ish-while-chasing-cheats> [hereinafter Bulusu].

³⁴ Kimberly A. Houser and Debra Sanders, *The Use of Big Data Analytics By The IRS: Efficient Solution Or The End of Privacy As We Know It?* 19 VANDERBILT J. ENT. & TECH. L. 817, 822 (2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=294300.

³⁵ Bulusu, *supra* note 33.

³⁶ The contract with Palantir Technologies Inc. is available at <http://src.bna.com/Df2deal>; see also FPDS-NG (FEDERAL PROCUREMENT DATA SYSTEM NEXT GENERATION) USER MANUAL, available at https://fpds.gov/wiki/index.php/FPDS-NG_User_Manual (last accessed Jun. 5, 2019).

³⁷ IRS: CRIMINAL INVESTIGATION ANNUAL REPORT 2018, *supra* note 14, at 6; see also *IRS Catches \$10 Billion in Tax Fraud in 2018*, BLOOMBERG TAX, Nov. 14, 2018, <https://news.bloombergtax.com/daily-tax-report/irs-catches-10-billion-in-tax-fraud-in-2018-1> [hereinafter *IRS Catches \$10 Billion in Tax Fraud in 2018*].

³⁸ *IRS Catches \$10 Billion in Tax Fraud in 2018*, *supra* note 37.

³⁹ Data Analytics Are Coming to an IRS Special Agent Near You (May 20, 2019), <https://www.taxnotes.com/tax-notes/criminal-violations/data-analytics-are-coming-irs-special-agent-near-you/2019/05/20/29hyv>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² I.R.M. §1.1.1.4(5)(e), available at https://www.irs.gov/irm/part1/irm_01-001-001 (last accessed May 17, 2019).

⁴³ Department of the Treasury, 2017 Annual Privacy, Data Mining, and Section 803 Reports, available at https://www.treasury.gov/privacy/annual-reports/Documents/Annual_Privacy_Data_Mining_Report_and_Section_803%20Report%20_FINAL_2.pdf (last accessed May 17, 2019).

⁴⁴ Department of the Treasury, 2016 Annual Privacy Act and Data Mining Report, available at https://www.treasury.gov/privacy/annual-reports/Documents/Annual_Privacy_and_Data_Mining_Report%20FY16.pdf.

⁴⁵ Fact Sheet FinCEN Query, <https://www.fincen.gov> (Continues on page 47)

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⁴⁷ Lai, *supra* note 24.

⁴⁸ Bulusu, *supra* note 33.

⁴⁹ IR-2018-219: IRS Criminal Investigation releases Fiscal Year 2018 Annual Report (Nov. 14, 2018), available at <https://content.govdelivery.com/accounts/USIRS/bulletins/21b6901>.

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⁵¹ Sara Friedman, *IRS explores AI applications*, GCN (Oct. 12, 2017), <https://gcn.com/articles/2017/10/12/irs-ai-chatbot.aspx>.

⁵² REPORT TO CONGRESSIONAL REQUESTERS, 2016 FILING SEASON: IRS IMPROVED TELEPHONE SERVICE BUT NEEDS TO BETTER ASSIST IDENTITY THEFT VICTIMS AND PREVENT RELEASE OF FRAUDULENT REFUNDS, U.S. Gov't Accounting Office (Jan. 4, 2017), available at <https://www.gao.gov/assets/690/682400.pdf>.

⁵³ *Id.* at 11.

⁵⁴ 2017 Digital Services Report, IRS, <https://www.irs.gov/tax-professionals/2017-digital-services-report> (last accessed at May 17, 2019).

⁵⁵ I.R.S., LB&I Announces Large Corporate Compliance Program (May 16, 2019), available at <https://www.irs.gov/newsroom/lbi-announces-large-corporate-compliance-program>.

⁵⁶ *Id.*; see also *IRS Rolls Out Large Corporate Compliance Program*, taxnotes (May 17, 2019), <https://www.taxnotes.com/tax-notes-today/corporate-taxation/irs-rolls-out-large-corporate-compliance-program/2019/05/17/29hyd>.

⁵⁷ *Id.*

⁵⁸ Enterprise Data to Revenue² (EDR²) Project Information: Phase 2, Franchise Tax Bd., <https://www.ftb.ca.gov/aboutftb/projects/edr/edr-2.shtml> (last accessed May 13, 2019).

⁵⁹ Tax Cuts and Jobs Act, Pub. L. 115-97, § 11042, 131 Stat. 2086 (2017).

⁶⁰ Robert Frank, *Tax collectors chase rich New Yorkers moving to low-tax states. Auditors inspect cell records, even your dog's vet bills*, CNBC, March 8, 2019, <https://www.cnbc.com/2019/03/08/tax-collectors-chase-rich-new-yorkers-moving-to-low-tax-states.html>.

⁶¹ *South Dakota v. Wayfair, Inc.*, 585 U.S. ___ (2018), 138 S. Ct. 2080 (2018).

⁶² See, e.g., Alex Forbes, *4 Big Post-Wayfair State Sales Tax Developments to Watch 2019*, SOVOS (Jan. 7, 2019), <https://sovos.com/blog/2019/01/07/4-post-wayfair-state-sales-tax-developments-watch-2019>; Gail Cole, *Not all states want marketplace facilitators to collect tax. Some just want information*, Avalara (Dec. 7, 2018), <https://www.avalara.com/us/en/blog/2018/12/not-all-states-want-marketplace-facilitators-to-collect-tax-some-just-want-information.html>; Gail Cole, *States actively seek non-compliant remote sellers*, Avalara (Nov. 12, 2018), <https://www.avalara.com/us/en/blog/2018/11/states-actively-seek-non-compliant-remote-sellers0.html>.

⁶³ 5 U.S.C. § 552.

⁶⁴ The term "Kovel accountant" derives from the case of *United States v. Kovel*, 296 F. 2d 918 (2d Cir. 1961). A Kovel accountant is employed in the event that a tax attorney is concerned that a client's conduct may result in criminal tax charges being brought. The Kovel accountant may need to prepare schedules of unreported financial information and thus determine the potential amount of any tax liability.

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