

# Taxpayer Advocate Highlights 10 Most Critical Problems Facing IRS

By: Robert S. Horwitz & Michael Greenwade

## Background: TAS – The Voice of the Taxpayer

The Taxpayer Advocate Service (TAS) is an independent organization within the Internal Revenue Service (IRS), which prides itself on being the “Voice of the Taxpayer” with the IRS and before Congress.<sup>1</sup> By statute,<sup>2</sup> the National Taxpayer Advocate (NTA), a position held by Erin Collins, who heads TAS, is required to submit an Annual Report to Congress that contains, among other things, an analysis of 10 of the most critical problems encountered by taxpayers in their dealings with the IRS.<sup>3</sup>

To construct the Annual Report, which is provided to Congress after the close of the former tax year, the NTA obtains input from a variety of sources, such as through helping taxpayers resolve issues with the IRS, public and private sector suggestions on systemic problems affecting taxpayers, and meetings with TAS leadership to create “advocacy projects” to address priority problems.<sup>4</sup> These inputs are then analyzed to determine how they affect a variety of factors such as the impact on taxpayers’ rights and finances and the number of taxpayers impacted.

For the Tax Year ending 2023,<sup>5</sup> the concerns highlighted by NTA Erin Collins’s Annual Report, released January 10, 2024, include eight of the critical problems from the previous year (2022) that the IRS failed to adequately address and two new problems that were uncovered during TAS’s yearly analysis.<sup>6</sup>

## Two New Problems to Look Out For

This year, NTA’s Annual Report introduced two new problems for the IRS to address: (1) the systemic assessment of international information reporting penalties and (2) identity theft’s effect on a taxpayer’s filing a return and timely obtaining a refund.

### International Information Reporting (IIR) Penalties

NTA’s Annual Report concluded the IRS’s approach to IIR penalties is “draconian and inefficient.”<sup>7</sup> The vast array of U.S. reporting requirements imposed on U.S. persons who receive money from abroad or have certain foreign financial interests and activities come with penalties

---

<sup>1</sup> <https://www.taxpayeradvocate.irs.gov/>

<sup>2</sup> 26 U.S.C. § 7803(c)(2)(B)(1).

<sup>3</sup> National Taxpayer Advocate 2023 Annual Report to Congress 1, <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/full-report/>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at C; see also National Taxpayer Advocate 2022 Annual Report to Congress B <https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/>.

<sup>7</sup> *Id.* at 73.

for noncompliance, most of which are needlessly harsh, automatically assessed, and often unexpected.<sup>8</sup>

Between 2018 and 2021, IIR penalties related to IRC § 6039 (failure to file information returns for gifts more than \$10,000) punished individual taxpayers with penalties averaging over \$235,000, 89% of which were handed out to lower- and middle-income individuals.<sup>9</sup>

Additionally, automatically charged IIR penalties often require taxpayers to waste resources to have them removed. Between 2018 and 2021, while the IRS removed merely 27% of the 915 penalties imposed through human-conducted audits, it removed 74% of the 10,052 penalties automatically imposed by its system.<sup>10</sup> Taxpayers often expend resources to get these penalties removed after they willingly come forward and file their late returns, which discourages voluntary compliance.<sup>11</sup>

NTA's Annual Report voiced that the "IRS is best served by focusing on compliance rather than retribution...IIR penalties disproportionately and indiscriminately punish taxpayers while narrowing their options for judicial review."<sup>12</sup>

### Identity Theft

Tax-related identity theft is not an entirely new issue. However, according to NTA's Annual Report, the unreasonable delays in processing returns and the issuance of refunds experienced by victims of tax-related identity theft and those flagged for possible tax-related identity theft is an increasingly new problem which the IRS has struggled to overcome as the number of victims as well as false flags increases.<sup>13</sup> Despite the IRS's Identity Theft Victim Assistance (IDTVA) program, which was established to help taxpayers resolve their identity theft issues, the uptick of cases in 2023—more than tripling in number since 2019<sup>14</sup>—and lack of resources allocated to this issue has drastically increased the number of days it takes for taxpayers to get their refund, from 117 days to provide refunds in 2019 to 556 days in 2023.<sup>15</sup>

NTA's Annual Report concluded the reason for increased delays in resolution is due to faulty IRS programming and complications in authenticating taxpayers. The IRS has a high False Detection Rate in which the IRS's system mistakenly flags legitimate returns.<sup>16</sup> After a false detection, the IRS sends only one notice to the taxpayer requesting authentication, which the taxpayer may not even receive the notice, and even if received, the taxpayer may struggle to understand action

---

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 79, 105, 106.

<sup>10</sup> *Id.* at 112.

<sup>11</sup> *Id.* at 110.

<sup>12</sup> *Id.* at 111.

<sup>13</sup> *Id.* at 78.

<sup>14</sup> *Id.* at 80.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 82.

required under the notice.<sup>17</sup> NTA’s Annual Report found this area to be a “continuous problem that plagues taxpayers and the IRS,” indicating there is still room for improvement.<sup>18</sup>

In a recent blog dated February 8, 2024, NTA Erin Collins indicated that the IRS, recognizing the issue with the content of the notices, began a pilot program that sends out several versions of the same type of letter asking taxpayers to authenticate their identities in order to determine which version is the best at getting a response from taxpayers.<sup>19</sup>

### **Eight Problems from 2022 Continued to Impede the IRS in 2023**

While the IRS has worked to improve its performance standards, NTA’s Annual Report for 2023 highlighted eight problems from 2022 that continue to hamper the IRS’s advancement: (1) processing; (2) employee recruitment, hiring, training, and retaining; (3) transparency; (4) telephone and in-person service; (5) return preparer oversight; (6) online account access for taxpayers and tax professionals; (7) compliance challenges for taxpayers abroad; and (8) appeals.

#### Processing

Similar to prior years, millions of taxpayers waited for their tax refunds or other necessary actions by the IRS required prior to resolving their tax issues.<sup>20</sup> While the IRS prioritized telephone service, which resulted in shorter wait times for taxpayers, the shift away from resources for IRS operations caused delays in processing inventory.<sup>21</sup> The IRS has not improved on decreasing its backlogged inventory with the total amount of remaining unprocessed amended returns, correspondence, and Accounts Management cases at the same level on October 28, 2023 (6.2 million)<sup>22</sup> as at the end of fiscal 2022 (September 30, 2022). This was about double the inventory being classified as overage in 2018.<sup>23</sup>

At the end of the 2023 filing season, the IRS’s processing backlog consisted of approximately 16.9 million documents,<sup>24</sup> indicating, as NTA’s Annual Report notes, the IRS should use more resources to reduce the backlog and prevent further delays.

#### Employee Recruitment, Hiring, Training, and Retaining

NTA’s Annual Report expressed concerns about the negative impact on taxpayers’ rights due to the IRS’s insufficient staffing,<sup>25</sup> which has led to a decline in the quality of service and an increase in processing delays.<sup>26</sup> The Report notes the IRS’s ineffective policies, technologies, and

---

<sup>17</sup> *Id.* at 83.

<sup>18</sup> *Id.* at 86.

<sup>19</sup> [Where’s My Refund? Has Your Tax Return Been Flagged for Possible Identity Theft? - TAS \(irs.gov\)](#).

<sup>20</sup> National Taxpayer Advocate 2023 Annual Report to Congress 5.

<sup>21</sup> *Id.* at 6.

<sup>22</sup> *Id.*

<sup>23</sup> (About 70% in 2023 vs. about 35% in 2018). *Id.*

<sup>24</sup> *Id.* at 8.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 20.

processes have resulted in IRS struggles to find, onboard, and retain the type of talented employees needed by the IRS to better its services.<sup>27</sup>

The Report makes many suggestions to improve in this area. To recruit: reduce the pay disparity between federal employees and non-federal employees, with federal employees being paid about 28% less than their counterparts while performing the same type of work.<sup>28</sup> To train: allocate more resources to classroom learning services.<sup>29</sup> To retain: re-recruit existing employees that have already established a track record within the IRS.<sup>30</sup> With about 55% of IRS employees estimated as retirement eligible in the next five years,<sup>31</sup> immediate attention to resolve this problem is vital.

### IRS Transparency

The IRS does not provide sufficiently clear and timely information to the public, fueling confusion and frustration.<sup>32</sup> Taxpayers and tax professionals struggle to understand IRS correspondence, often encountering unreliable IRS guidance, uncertainty on the status of pending issues, and IRS employees without the knowledge to answer their questions and/or the authority to resolve their matters.<sup>33</sup> On some occasions, unclear or late IRS guidance required many to make last-minute reversals on tax positions.<sup>34</sup>

NTA's Annual Report states, "transparency is about establishing trust and improving the communication of the IRS with the tax community and with Congress."<sup>35</sup> However, the IRS has sought to sell its successes in ways that do not indicate its actual progress.<sup>36</sup> The IRS did not explain that while taxpayers and tax professionals can digitally submit documents through its upload tool, the tool was not developed enough to manage the processing of the submissions, resulting in delays and unrealistic expectations of timing.<sup>37</sup>

The Annual Report cautioned the "gap between messaging and actual progress... over time erode trust in tax administration"<sup>38</sup> and suggested the IRS should act quickly to acknowledge and correct inaccurate IRS representations.<sup>39</sup>

### Telephone and In-Person Service

While the IRS has showed meaningful improvement in the quality of its phone service in 2023, taxpayers continue to experience difficulties obtaining telephone and face-to-face assistance to

---

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 26.

<sup>29</sup> *Id.* at 30.

<sup>30</sup> *Id.* at 28.

<sup>31</sup> *Id.* at 21.

<sup>32</sup> *Id.* at 34.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 40.

<sup>35</sup> *Id.* at 36.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 46.

resolve their tax matters.<sup>40</sup> Although the IRS reduced the number of its disconnects from phone calls—from 74 million in 2022 to 16.3 million in 2023<sup>41</sup>—the IRS attempted to paint its Level of Service (LOS) in a positive light far greater than what the tax community experienced in reality.

The IRS calculation for LOS does not actually address “quality service.”<sup>42</sup> In fact, NTA’s Annual Report found IRS representatives spent 3.73 million hours assigned to answer phone calls but were idle for more than a third of that time.<sup>43</sup> Tax professionals who eventually reached a representative often incurred extra unnecessary costs from delays and the IRS representatives’ inability to answer questions.<sup>44</sup>

Additionally, some taxpayers, who seek in-person assistance are faced with only one IRS face-to-face assistance location in their state, which is often insufficiently staffed or has a limited schedule.<sup>45</sup>

### Return Preparer Oversight

Taxpayers are harmed by the absence of minimum competency standards and lack of IRS oversight for return preparers, who are generally the first layer of protection to prevent fraud and errors in tax administration.<sup>46</sup> Even though tax laws are complex, many tax preparers have no credentials and are not subject to proficiency tests and/or continuing education.<sup>47</sup>

Taxpayers are held responsible for inaccurate returns, so inept or dishonest preparers can harm taxpayers by subjecting them to unanticipated tax liabilities.<sup>48</sup> In 2021, tax returns claiming the Earned Income Tax Credit (EITC) prepared by non-credentialed preparers accounted for 79% of total EITC returns, 91% of audits of EITC returns, and about 94% of all EITC audit adjustments. This suggests that non-credentialed return preparers are less equipped than their credentialed counterparts to prepare accurate returns for their clients.<sup>49</sup>

Non-credentialed return preparers “comprise the overwhelming majority” of those who prepare returns in low-income neighborhoods with minority populations. The IRS is currently unable to oversee return preparers and fully protect lower income and minority taxpayers from predatory preparers. Despite the need to ensure tax preparers are competent and ethical and the IRS’s ability to conduct appropriate oversight, NTA’s Annual Report asserts that “calls for preparer regulation have so far gone unheeded.”<sup>50</sup>

### Online Account Access for Taxpayers and Tax Professionals

---

<sup>40</sup> *Id.* at 48.

<sup>41</sup> *Id.* at 52.

<sup>42</sup> *Id.* at 48.

<sup>43</sup> *Id.* at 51.

<sup>44</sup> *Id.* at 48.

<sup>45</sup> *Id.* at 49.

<sup>46</sup> *Id.* at 65.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 68.

<sup>50</sup> *Id.* at 69.

When the IRS cannot quickly resolve issues and receive answers to questions for taxpayers through its digital capabilities, taxpayers' overall satisfaction and trust in the IRS is negatively impacted.<sup>51</sup> Yet, the IRS's digital services remain inadequate, impeding efficient case resolution and forcing millions of taxpayers to call or send correspondence to the IRS.<sup>52</sup> The COVID-19 pandemic caused delays and frustration that severely limited these more traditional methods.

The IRS has yet to provide taxpayers and tax professionals with robust online account systems and/or integrated digital communication tools to access tax information and services essential for tax administration and quality services.<sup>53</sup> Taxpayers' and tax professionals' online accounts lack full functionality,<sup>54</sup> the Business Tax Accounts service is only available to sole proprietors,<sup>55</sup> reporting agents, who may sign returns, file returns, and make payments for their clients, lack online account access,<sup>56</sup> and the IRS's document upload tool lacks an efficient workflow process.<sup>57</sup>

### Compliance Challenges for Taxpayers Abroad

The IRS underserves taxpayers living abroad, who face significant challenges in meeting their United States tax obligations and who are subject to severe failure-to-file penalties regardless of whether they are aware of such requirement.<sup>58</sup> These taxpayers must understand a complicated tax system even though the IRS offers them no in-person assistance locations outside of the U.S. and Puerto Rico.<sup>59</sup>

Although the IRS has advanced its technological capabilities within the U.S., overseas taxpayers who do not have a U.S. phone number, mailing address, or social security number have difficulty setting up an online account and accessing their online accounts.<sup>60</sup> To make matters worse, given the generally longer time for mail to reach taxpayers abroad, timeframes to respond to time-sensitive IRS notices may result in a loss of taxpayers' "critical administrative, due process, and judicial rights."<sup>61</sup>

NTA's Annual Report concluded there is a unique burden imposed on the community of taxpayers living outside of the U.S., who have persistently gone, and continue to go, without access to beneficial IRS services. As a result, "taxpayers abroad may demonstrate waning compliance."<sup>62</sup>

---

<sup>51</sup> *Id.* at 87.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 87.

<sup>54</sup> *Id.* at 90.

<sup>55</sup> *Id.* at 93.

<sup>56</sup> *Id.* at 95.

<sup>57</sup> *Id.* at 96.

<sup>58</sup> *Id.* at 116.

<sup>59</sup> *Id.* at 123.

<sup>60</sup> *Id.* at 125.

<sup>61</sup> *Id.* 128-29.

<sup>62</sup> *Id.* at 130.

## Appeals

The Independent Office of Appeals plays a crucial role in administrative case resolution within the IRS, but many taxpayers and tax professionals grow frustrated with lengthy process times and view Appeals as lacking independence from the IRS.<sup>63</sup>

The average Appeals case takes about a year to resolve with taxpayers experiencing delays scheduling in-person conferences.<sup>64</sup> Additionally, recent data indicates that Appeals Officers often lack autonomy in making settlement decisions,<sup>65</sup> perhaps in part from a perception that the Office of Chief Counsel, who is the chief legal advisor to the IRS, simply attends the opening conferences of Appeals in large and certain coordinated cases to develop issues for trial.<sup>66</sup>

The inability of taxpayers to resolve their issue in Appeals or to rely on the impartiality of Appeals, may result in additional financial and emotional strain on taxpayers and compromise taxpayers' statutory right to appeal an IRS decision in an independent forum.<sup>67</sup>

## CONCLUSION

Noting a silver lining to what otherwise appears to be a dark cloud, the NTA commended the IRS on overcoming most of the COVID-19 problems and getting back “to business as usual.” As the report noted, however, “the baseline level of ‘business as usual’ was not good enough.”<sup>68</sup> Taxpayers deserve a fair and equitable tax administrative agency that provides timely and clear guidance, allows taxpayers to file their returns electronically, answers its phones without undue waiting and resolves most problems during the initial contact and allows taxpayers to conduct business on any follow-up matters through online accounts efficiently. Whether the IRS will address the most serious problems highlighted in the 2023 Annual Report may be decided in large part on whether adequate funding, which will allow the IRS to invest and continue to improve its infrastructure and woman/manpower, is a priority of Congress in 2024.

**ROBERT S. HORWITZ** – *Robert S. Horwitz is a principal at Hochman Salkin Toscher Perez P.C., former Chair of the Executive Committee of the Taxation Section, California Lawyers' Association, a Fellow of the American College of Tax Counsel, a former Assistant United States Attorney and a former Trial Attorney, United States Department of Justice Tax Division. In 2022 the Tax Section of the California Lawyers Association awarded him the Joanne M. Garvey Award for lifetime achievement in and contributions to the field of tax law. For more information, please contact Robert S. Horwitz at [horwitz@taxlitigator.com](mailto:horwitz@taxlitigator.com)*

---

<sup>63</sup> *Id.* at 132.

<sup>64</sup> *Id.* at 136.

<sup>65</sup> *Id.* at 133.

<sup>66</sup> *Id.* at 135.

<sup>67</sup> *Id.* at 132.

<sup>68</sup> *Id.* at xiii.

**MICHAEL GREENWADE** – *Mr. Greenwade is an Associate at Hochman Salkin Toscher Perez P.C. Mr. Greenwade concentrates his practice in tax audits and examinations, deductibility of business expenses, and substantiation of cost basis. Mr. Greenwade is a former law clerk in the Major Crimes Division at the L.A. County District Attorney's Office, a former tax policy Research Assistant at USC Gould School of Law, where he earned his J.D., and was a Teacher's Assistant at USC Leventhal School of Accounting. He graduated Cum Laude from USC Marshall School of Business, earning his Bachelor of Science. For more information, please contact Michael Greenwade at [mg@taxlitigator.com](mailto:mg@taxlitigator.com)*