National Taxpayer Advocate 2013 Annual Report to Congress (ARC): The Most Serious Problems (MSPs) Encountered by Taxpayers

2013 ARC – MSP Topic #1 – TAXPAYER RIGHTS: The IRS Should Adopt a Taxpayer Bill of Rights as a Framework for Effective Tax Administration

Problem

The U.S. tax system is built on voluntary compliance. For the government, voluntary compliance is much cheaper than enforced compliance, because the government does not have to spend money to collect amounts that are voluntarily paid. Taxpayer rights are central to voluntary compliance. If taxpayers believe they are treated, or can be treated, in an arbitrary and capricious manner, they will mistrust the tax system and be less likely to comply with the laws voluntarily. If taxpayers have confidence in the fairness and integrity of the tax system, they will be more likely to comply.

There are dozens of discrete taxpayer rights scattered throughout the Internal Revenue Code, but they are not organized or presented in a coherent way. Similarly, Congress in the past has enacted several bills with the name "Taxpayer Bill of Rights," but they, too, create discrete rights and do not articulate broad principles. Not surprisingly, in response to a survey of U.S. taxpayers conducted for TAS in 2012, less than half said they believed they have rights before the IRS, and only 11 percent said they knew what those rights are.

A Taxpayer Bill of Rights (TBOR), modeled on the U.S. Constitution's Bill of Rights, would provide a thematic list of core taxpayer rights, and a foundational framework for taxpayers and IRS employees alike. Its value can scarcely be overstated. A Taxpayer Bill of Rights provides organizing principles – a frame- work – for effective tax administration.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Adopt a Taxpayer Bill of Rights, including ten fundamental taxpayer rights and five taxpayer	The IRS recognizes the importance of embracing and highlighting the Taxpayer Bill of Rights and using it as a	Yes	The National Taxpayer Advocate commends IRS for adopting the Taxpayer Bill of Rights. The IRS has taken a

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responsibilities.	reinforcing principle for all IRS employees as a way to improve taxpayer service and preserve the integrity of the tax system. The Taxpayer Bill of Rights offers a clear explanation of every person's fundamental rights, including when they pay taxes, receive refunds or become involved in a tax dispute with the IRS. While taxpayer rights has been a cornerstone principal of the IRS following the Restructuring and Reform Act of 1998, the IRS recognizes it needs to do more in this area. The IRS fully embraces the revised language of the Taxpayer Bill of Rights and will continue to collaborate with the National Taxpayer Advocate to make this update visible to all taxpayers and employees. These rights include: the right to be informed, the right to quality service, the right to pay no more than the correct		major leap forward in ensuring that every taxpayer and every IRS employee knows and understands the basis upon which effective tax administration rests in a democratic society. The National Taxpayer Advocate is pleased that the IRS has committed to make a serious effort to educate taxpayers and its employees about these rights. The National Taxpayer Advocate commits to work with the IRS and Congress to ensure taxpayers are able to avail themselves of these remedies and to recommend additional remedies so the TBOR's promises are, in fact, enforceable.

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	amount of tax, the right to challenge the IRS's position and be heard, the right to appeal an IRS decision in an independent forum, the right to finality, the right to privacy, the right to confidentiality, the right to retain representation, and the right to a fair and just tax system.		
2. Prominently display a link on the IRS.gov homepage a link ("Know Your Rights as a Taxpayer") to a taxpayer rights page, which will further link to specific explanations of taxpayer rights and responsibilities.	As part of the effort to adopt the revised language of the Taxpayer Bill of Rights and communicate its importance to external stakeholders, the IRS is taking actions now to prominently feature the Taxpayer Bill of Rights on the IRS.gov home page to ensure that online visitors can easily navigate to information about taxpayer rights. The IRS will also make any corollary updates to pages within the IRS.gov website when displaying information about taxpayer rights is appropriate and useful to online visitors.	Yes	The National Taxpayer Advocate looks forward to collaborating with the IRS to implement a taxpayer rights page, which will further link to specific explanations of taxpayer rights and responsibilities.

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3. In collaboration with the National Taxpayer Advocate, post taxpayer rights language on the business operating division pages of IRS.gov that refers to TAS, Low Income Taxpayer Clinics, and specific taxpayer rights and responsibilities and contains links to the U.S. Tax Court web page, where appropriate.	As part of the effort to adopt the revised language of the Taxpayer Bill of Rights and communicate its importance to external stakeholders, the IRS is taking actions now to collaborate with the National Taxpayer Advocate to update key pages of IRS.gov with information about the Taxpayer Bill of Rights. The external website, however, is not generally designed around IRS business units, rather around types of taxpayers.	Yes	Making the TBOR "real" to taxpayers will require a continuing commitment from the IRS and its employees, including informing taxpayers of existing remedies and identifying gaps where additional remedies may be required. The National Taxpayer Advocate commits to work with the IRS and Congress to ensure taxpayers are able to avail themselves of these remedies and to recommend additional remedies so the TBOR's promises are, in fact, enforceable.

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4. Require all public- and taxpayer-facing IRS sites and offices to display a poster and brochures about the Taxpayer Bill of Rights, to be developed in collaboration with the National Taxpayer Advocate.	As part of the ongoing effort to communicate the importance of the Taxpayer Bill of Rights to external stakeholders, the IRS is taking actions now to assess the feasibility of printing and mailing materials to all public- and taxpayer-facing IRS sites and offices. Implementation of this recommendation is contingent on the budget. If the FY 2014 budget does not allow for the printing and mailing of posters and brochures to all public- and taxpayer-facing IRS sites and offices, then the IRS will consider alternative options for effectively making the public aware of their fundamental rights as taxpayers.	Yes	The National Taxpayer Advocate notes that the adoption of the TBOR took place after the IRS finalized the details of its strategic plan for fiscal years 2014 through 2017. That plan is notably deficient in references to taxpayer rights and a Taxpayer Bill of Rights. Specifically, review of the plan identifies only two mentions of taxpayer rights in a 40-page document. The National Taxpayer Advocate expects the IRS will rectify this deficiency both in its next strategic plan and updates to the current plan, and also by undertaking the steps it commits to.

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5. Require all IRS operating divisions and functions when proposing initiatives, including budget initiatives, to include in their business case justifications an analysis of the proposed operation in terms of the Taxpayer Bill of Rights.	The IRS's annual budget development process includes a requirement that all business units coordinate with the Taxpayer Advocate Service (TAS) regarding the downstream program impact of any proposed initiatives. Historically, the purpose of this coordination has been for TAS to identify the additional staffing they may need to handle any increased TAS workload expected as a result of additional enforcement or taxpayer service activity. However, this existing process can also afford TAS an opportunity to provide feedback regarding the relationship between a proposed initiative and the Taxpayer Bill of Rights.	Yes	The National Taxpayer Advocate is particularly pleased that the IRS has committed to revise its guidance regarding development of initiatives to instruct business unit owners "to evaluate the impact of proposed initiatives on taxpayer rights and incorporate resources into their requests to ensure that taxpayer rights are appropriately considered." The Taxpayer Advocate Service appreciates the IRS's recognition and expectation that TAS will review these initiatives and raise any concerns about the negative impact on taxpayer rights.

2013 ARC – MSP Topic #2 – IRS BUDGET: The IRS Desperately Needs More Funding to Serve Taxpayers and Increase Voluntary Compliance

Problem

In fiscal terms, the mission of the IRS – to "[p]rovide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all" – trumps the missions of all other federal agencies. If the IRS lacks adequate funding to do its job effectively, the government will have fewer dollars to fund the military, social programs, and all other programs – or simply to reduce the deficit. Since fiscal year (FY) 2010, the IRS budget has been cut by nearly eight percent while inflation has risen by about six percent. As a result, the IRS is neither providing "top quality service" nor maintaining effective enforcement. In FY 2013, the IRS could only answer 61 percent of customer service calls, and respond timely to just 47 percent of taxpayers' letters about changes to their accounts. The IRS also slashed its overall training budget by a staggering 87 percent, which means the IRS not only has fewer employees than four years ago, but those who remain are less equipped to perform their jobs and to understand and respect taxpayer rights.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Revise the budget rules so that the IRS is "fenced off" from otherwise applicable spending ceilings and is viewed more like an accounts receivable department. It should be funded at a level designed to maximize tax compliance, particularly voluntary compliance, with due regard for protecting taxpayer rights and minimizing taxpayer burden.	N/A – Congressional Recommendation	N/A – Congressional Recommendation	N/A – Congressional Recommendation

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
2. In allocating IRS resources, keep in mind that tax compliance requires a combination of high quality taxpayer service, outreach and education, and effective tax-law enforcement, and the IRS should continue to maintain a balanced approach toward that end. We are concerned that the program integrity cap adjustment procedures used in the past skew this important balance and should be avoided, but if cap adjustments continue to be used, we recommend they be written in a manner that applies to broadly defined compliance initiatives that include both taxpayer service (including outreach and education) and enforcement components.	N/A – Congressional Recommendation	N/A – Congressional Recommendation	N/A – Congressional Recommendation

2013 ARC – MSP Topic #3 – EMPLOYEE TRAINING: The Drastic Reduction in IRS Employee Training Impacts the Ability of the IRS to Assist Taxpayers and Fulfill Its Mission

Problem

To deal with a complex, constantly changing tax law and provide taxpayers with complete and accurate service, IRS employees must receive prompt and appropriate training and education. Since fiscal year (FY) 2009, budget cuts and sequestration have led the IRS to cut its training budget by over 85 percent. The IRS has reduced its training and education programs to a bare minimum without considering the types of training employees need to perform basic job functions, protect taxpayer rights, and prevent harm and undue burden for taxpayers. Lacking appropriate training and education, employees will be unable to fulfill their mission and taxpayer service will continue to erode. Delivering timely, appropriate education and training to employees is essential to the core function of the IRS.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Propose that Congress appropriate sufficient funding for the IRS to train its employees through the most effective means (in person, conference call, self-study, outside courses, etc.) for the subject matter in all aspects of their jobs including the protection of taxpayers' rights.	The IRS has implemented significant reductions in its non-labor spending. Since 2010, the IRS has limited employee travel and training to mission-critical projects. By our estimates, training costs have been reduced by 83 percent and training-related travel costs have been reduced by 87 percent since 2010. We have expanded the use of alternative delivery methods for in-person meetings, training, conferences, and operational travel. However, we have requested in our Fiscal Year 2015 budget request that some	Yes (Partial)	The National Taxpayer Advocate appreciates the IRS's efforts in the face of shrinking budgets and increasing scrutiny. The National Taxpayer Advocate is pleased that the IRS requested increased funding for FY 2015, and fully supports additional funding to ensure that the IRS is able to better serve taxpayers. TAS is particularly pleased that the IRS recognizes the need for face-to-face training of employees in taxpayer-facing occupations.

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	of these funds be restored to ensure that IRS employees interacting with the public are properly trained and able to provide the answers and assistance expected.		
2. Prioritize funding for training employees in critical job skills.	Current IRM 6.410.1 Policy Business units (BU) are required to establish funding levels and determine work plans on an annual basis. As part of the process, BUs must include training in their work plans. Each year, the BUs develop Annual Training Plans based on a training needs assessment. The Embedded Learning and Education (L&E) staff meet with their BU contacts to determine the annual training resource requirements and to submit the training plans to the HCO Learning, Education, and Delivery Services (LEADS) division. Embedded L&E periodically review the BU Annual Training Plan to	Yes (Partial)	The exclusions and relaxation of spending limits the IRS has obtained in later FY 2014 from the Department of Treasury are encouraging. The National Taxpayer Advocate looks forward to continuing to work with the IRS to ensure that it delivers training, particularly to employees in mission critical public-facing jobs, in a timely and appropriate manner. TAS will also continue to advocate that the Treasury Department further expand the Commissioner's approval authority over training so that it aligns with OMB guidance.

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	determine the training that must be developed or revised each year. Embedded L&E and the BU Finance Offices are responsible for: • Allocating training funds to meet the training requirements of their BUs • Distributing training funds in accordance with their BUs training funding process • Monitoring additions, changes, and deletions to training requirements and their impact on funding levels • Ensuring training requirements are entered into the Annual Training Plan • Preparing program guidance for managing training funds within their BUs • Planning and funding delivery strategies		

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3. Request and obtain from the Department of Treasury authority to approve training within the OMB stated guidelines.	The Department of the Treasury did not agree with OMB's less restrictive guideline requiring that only proposed spending over $100,000 for a single conference event to be reviewed at the level of the agency Deputy Secretary or equivalent. However, Treasury did agree to revise Treasury Directive 12-70 and increase the IRS Commissioner's approval threshold (from $3K to $20K), Business Operating Division Commissioners' approval threshold (from under $3K to $10K-$20K), First Level Executive (from $0 to under $10K) and granted numerous exclusions (e.g., online training that does not involve travel), thereby relieving some burden for obtaining approval of training events. The DCOS has issued interim guidance incorporating revised provisions and approval requirement updates.	Yes (Partial)	The exclusions and relaxation of spending limits the IRS has obtained in later FY 2014 from the Department of Treasury are encouraging. The National Taxpayer Advocate looks forward to continuing to work with the IRS to ensure that it delivers training, particularly to employees in mission critical public-facing jobs, in a timely and appropriate manner. TAS will also continue to advocate that the Treasury Department further expand the Commissioner's approval authority over training so that it aligns with OMB guidance.

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4. Clearly define the criteria for TRB approval of training.	The Training Review Board (TRB) conducts high-level reviews of planned training events estimated to cost $20K or greater to ensure training events are mission critical and delivered in the most cost effective manner (location, # of participants, lodging, and travel). The TRB recommendations have to be approved by the Commissioner of the Internal Revenue with events greater than $49,999 routed to the Department of the Treasury for final approval. Efforts are underway to strengthen the role of the TRB to look at training needs and gaps across the IRS more strategically.	Yes	

2013 ARC – MSP Topic #4 – TAXPAYER RIGHTS: Insufficient Education and Training About Taxpayer Rights Impairs IRS Employees' Ability to Assist Taxpayers and Protect Their Rights

Problem
While the Internal Revenue Code guarantees certain rights to taxpayers, many taxpayers are unaware of their rights, and IRS employees do not always communicate them to taxpayers at the right times. The IRS should provide employees with an overarching, comprehensive education about taxpayer rights as well as training and guidance about how those rights apply in specific situations.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Require all future updates of training modules to include a significant segment on taxpayer rights.	The IRS is committed to the fair and equitable treatment of taxpayers in all situations, from interacting with a taxpayer to respond to an inquiry or resolving a compliance issue. The U.S. taxation system is dependent upon the belief of taxpayers that the tax laws they follow apply to everyone, and the IRS will respect and protect their rights under the law. To ensure this is accomplished, we provide our employees the necessary training using a wide variety of training materials and job aids. We already provide information on taxpayer rights to new hires and our ongoing training curriculum addresses taxpayer rights as they relate to	No	The IRS's insistence that it already provides adequate training on taxpayer rights, despite multiple examples TAS has raised, calls into question the IRS's commitment to the Taxpayer Bill of Rights.

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	specific customer situations, including privacy, disclosure, third-party representation, collection and exam processes, as well as courteous and professional service. We embed taxpayer rights in our Internal Revenue Manual (IRM) procedures, training modules, workshops, team meeting discussions, job aids and automated systems. Additionally, all IRS personnel designated as 1204 employees are subject to the retention standard, "The Fair and Equitable Treatment of Taxpayers" (IRM 1.5.3.6). This standard ensures that employee performance focuses on providing quality service to taxpayers. Employees receive biennial training on Section 1204 of the Restructuring and Reform Act of 1998 (RRA '98) as a mandatory briefing. When an employee's performance does not meet this standard, they are rated unsuccessful and action is taken to provide an		

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	improvement period, reassess and, if warranted, remove the employee. In egregious cases, removal is immediate. We do not agree that future updates of training modules require significant revision to address taxpayer rights.		
2. Require all training modules that will not be updated in the next year to include the independent taxpayer rights training module to be developed by TAS.	As stated in the IRS response to 4-1, IRS believes adequate training is currently provided on taxpayer rights.	No	The IRS's insistence that it already provides adequate training on taxpayer rights, despite multiple examples TAS has raised, calls into question the IRS's commitment to the Taxpayer Bill of Rights. The new Taxpayer Bill of Rights provides the IRS with an opportunity to integrate rights awareness at a very practical and day-to-day level. The IRS points to examples like the biennial training employees receive on § 1204 of RRA 98, but the Fair and Equitable Treatment of Taxpayers retention standard, which is mandated by statute, addresses only one of the ten core taxpayer rights. The IRS needs to incorporate all ten of

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			these rights throughout all of its training.
3. Require all IRS employees to take the TAS Roadmap to a Tax Controversy Level One training.	The IRS does not agree that all employees should receive training on the TAS Roadmap to a Tax Controversy Level One training. This TAS-developed training provides a high-level overview of the legal issues related to return filing, examinations, collections, appeals and judicial review. It includes three roadmaps: Litigation and Assessment, Pre-Litigation Administrative Procedures and Collection. Given the technical nature of the content, it is not training that would be appropriate for all IRS employees. Moreover, given limited resources, it would not be appropriate to divert all employees from their core work to complete this training.	No	It is surprising that the IRS is opposed to showing all employees the Roadmap to a Tax Controversy Level One training. TAS has offered this training to all of its employees, including administrative assistants and headquarters analysts. Employees from across the organization commented that they found it important and helpful. TAS has even offered to revise or edit the training to make it more accessible. The IRS' response states that this training would divert employees from their core work. Understanding taxpayer rights and how they apply during the controversy process is a necessary part of every employee's core work. In refusing to accept this recommendation, the IRS has not taken the time to consider which occupations the Roadmap training may be appropriate for, nor how the

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			training could be altered to fit the needs of different types of employees. The IRS could offer the training to examination and collection employees, so they would understand what comes after cases pass through their particular work areas, thus creating a broader understanding of taxpayer rights and tax administration.
4. Require all operating divisions to include in their Business Performance Reviews an analysis of how employees were trained on taxpayer rights issues and what actions the operating divisions took to incorporate the TBOR into their programs.	The IRS recognizes the importance of publicizing the Taxpayer Bill of Rights and using them as an organizing principle for all IRS employees as a way to improve taxpayer service and preserve the integrity of the tax system over the long-term. This will include communicating with employees throughout the year about the importance of the Taxpayer Bill of Rights and its application to everyday work activities. Business Performance Reviews (BPRs), which occur on a quarterly basis, detail high-level organizational performance information to the IRS	Yes (Partial)	The National Taxpayer Advocate is pleased that the IRS plans to include issues related to the Taxpayer Bill of Rights in business performance reviews. However, the IRS falls short of meeting the recommendation by not requiring that all operating divisions include an analysis of how employees were trained on taxpayer rights issues and what actions the operating divisions took to incorporate TBOR into their programs. Taxpayer rights should be an integral part of any process the IRS uses to review performance, goals, initiatives, programs, and

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	Commissioner and the Deputy Commissioners. The reviews are vital components of the Service's strategic planning and budgeting process and provide a framework for measuring, reporting, and reviewing performance, goals, initiatives, and collaborative programs and processes. BPRs also provide the opportunity to share evolving concerns with the IRS leadership. As such, it would be expected that issues or concerns involving the Taxpayer Bill of Rights be addressed at the BPRs to the extent necessary and appropriate. As a corrective action, we propose to reinforce this expectation with those IRS officials involved in producing the BPR materials and participating in the related discussions.		processes.
5. Require operating divisions to update their case quality attributes to measure whether the employee informed the	The IRS believes this recommendation has already been implemented. In the Examination area, case quality attribute number 617 "TP/POA	No	The IRS response reflects that it does not agree to require all operating divisions to update their case quality attributes to measure whether taxpayers are

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taxpayer of his or her rights beyond just requiring the mailing of a publication or notice.	Rights and Notification" measures if the taxpayer representative was advised of all rights and kept informed throughout the examination process. See IRM Exhibit 4.8.3-1. During IRS collection activities, case quality attribute number 610 "Identified/Provided Taxpayer Rights or Statutory Letters" measures whether IRS employees "followed the regulatory/statutory guidelines to ensure that taxpayer rights are protected during the collection process. This includes…the explanation of additional appeal rights that may arise during the case. As case circumstances warrant, the revenue officer must advise the taxpayer of appeal rights under CAP and CDP, as well as the right to appeal certain decision such as…." See IRM 5.13.2.6.4. Finally, CAP program managers are instructed that employees must, among other things, know and observe the rights of taxpayers.		informed about their rights. The IRS only points to a handful of case quality attributes that involve taxpayer rights, and some of these do not go beyond requiring the employee to mail a notice. The recommendation is for case quality attributes that go beyond just mailing a publication or notice.

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	See IRM 1.4.20.14. While this recommendation has already been implemented, the response to Recommendation 4-8 below—IRS will be reviewing the IRM for updates needed relative to the Taxpayer Bill of Rights—will include IRM sections involving employees' responsibilities for informing taxpayers of their rights.		
6. Update the IRS's guidance for developing CJE's to include a focus on taxpayer rights.	Taxpayer Rights are incorporated in every manager and employee annual performance expectation meeting and appraisal discussion. RRA 98 Section 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The IRS established the retention standard to ensure that employee performance is focused on providing quality service to taxpayers instead of on achieving enforcement results. The retention standard requires employees to:	No	The new Taxpayer Bill of Rights provides the IRS with an opportunity to integrate rights awareness at a very practical and day-to-day level. The IRS's example about § 1204 of RRA 98, the Fair and Equitable Treatment of Taxpayers retention standard, addresses only one of the ten core taxpayer rights. The recommendation asks the IRS to update its guidance for developing CJE's so that there is a focus on the core taxpayer rights. By providing updated guidance, the IRS can ensure that all CJE's will include taxpayer rights elements.

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	•administer the tax laws fairly and equitably •protect taxpayers' rights •treat each taxpayer ethically with honesty, integrity, and respect.		
7. Distribute taxpayer rights posters to managers and require all employee offices to place them where the maximum number of employees will see them.	The IRS will ensure IRS employees are made aware of the publication through appropriate placement, managerial discussions and through traditional internal communication channels.	Yes	
8. Update all IRM sections identified by TAS with language provided by TAS to incorporate the TBOR into the IRM.	With the assistance of TAS, the IRS will review the IRM. The IRS will update the IRM as necessitated by the Taxpayer Bill of Rights. The IRS does not agree to update the IRM with the specific language provided by TAS, rather, the final Taxpayer Bill of Rights, as included in IRS Publication 1, Your Rights as a Taxpayer (Catalog Number 64731W) will dictate the language that is properly included in any revisions to the IRM.	Yes (Partial)	The National Taxpayer Advocate is disappointed that the IRS does not agree to update the IRM with specific language provided by TAS to incorporate taxpayer rights. The National Taxpayer Advocate hopes the IRS is truly committed to a meaningful collaboration with the TAS in reviewing and updating the manual, which means working with TAS on the exact language to be inserted.

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9. Update all IRM sections identified by TAS to include requirements for employees to provide either Publication 1 or separate publications that explain the application of taxpayer rights in particular contexts, such as examination (Publication 1-E), collection (Publication 1-C), and appeals (Publication 1-A). Update all notices identified by TAS to include Publication 1, Publication 1-E, Publication 1-A, or Publication 1-C as a stuffer.	As the IRS does its periodic updates of the IRM, we will review to determine if any updates are needed regarding providing Pub 1 and TBOR.	Yes (Partial)	The National Taxpayer Advocate is disappointed that the IRS does not agree to update the IRM with specific language provided by TAS to incorporate taxpayer rights. The National Taxpayer Advocate hopes the IRS is truly committed to a meaningful collaboration with the TAS in reviewing and updating the manual, which means working with TAS on the exact language to be inserted.

2013 ARC – MSP Topic #5 – REGULATION OF RETURN PREPARERS: Taxpayers and Tax Administration Remain Vulnerable to Incompetent and Unscrupulous Return Preparers While the IRS Is Enjoined From Continuing its Efforts to Effectively Regulate Unenrolled Return Preparers

Problem

In tax year 2011, unregulated tax return preparers prepared over 42 million individual returns, or more than half of all the returns handled by preparers. As preparers play a critical role in tax administration, it is essential that the IRS ensure they are competent, visible, and accountable. The IRS had instituted a program to impose minimum competency requirements, but a U.S. District Court in Loving v. Internal Revenue Service enjoined the IRS from enforcing the testing and continuing education elements of the program. Unless this ruling is overturned on appeal, taxpayers will continue to find themselves without meaningful IRS oversight of preparers in a world where anyone can hang out a shingle as a "tax return preparer" with no knowledge or experience needed.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Offer unenrolled preparers the opportunity to earn a voluntary examination and continuing education certificate.	Following the Loving court decision preventing the IRS from mandating testing and continuing education for paid tax return preparers, the IRS remains concerned about protecting taxpayers and ensuring they receive quality assistance in tax return preparation. The President's Fiscal Year 2015 Budget includes a proposal to explicitly authorize the IRS to regulate all paid tax return preparers. IRS Commissioner Koskinen has urged Congress to quickly enact the proposal. Meanwhile, IRS	Yes	The National Taxpayer Advocate agrees that legislation is the best solution and will continue to recommend that Congress provide the IRS with the necessary authority to impose testing and continuing education requirements on unenrolled preparers. In the meantime, we believe a voluntary certificate is an appropriate interim measure. However, the National Taxpayer Advocate believes the voluntary certificate program should have both testing and continuing

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	is taking a close look at the possibility of an interim step involving a program of voluntary continuing education.		education components to establish minimum competency. TAS understands that testing a smaller population of preparers may involve higher user fees than charged for the exam in the past, but the IRS should not discard this option until it solicits bids with a Request For Proposal (RFP). In addition, although not as effective as a proctored exam, the IRS should also evaluate the feasibility of offering an online exam, similar to the one offered through the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs.
2. Restrict the ability of unenrolled preparers to represent taxpayers in audits of returns they prepared unless they earn the voluntary examination and continuing education certificate.	OPR is working with Counsel to revise the rules restricting unenrolled preparers' representation rights so that an unenrolled return preparer may represent taxpayers only if the preparer has obtained, on a voluntary basis, annual certification that requires passing a course that includes a test and completing continuing	Yes	The National Taxpayer Advocate commends the IRS for moving forward with plans to condition the authority for an unenrolled preparer to represent his or her preparation-clients in audits on the preparer earning the voluntary certificate. The National Taxpayer Advocate is also pleased that the IRS will

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	education as prescribed in published guidance.		further consider prohibiting taxpayers from designating unenrolled preparers as the Third Party Designees unless they earn the voluntary certificate.
3. Restrict the ability to name an unenrolled preparer as a Third Party Designee on Form 1040.	The IRS is exploring the complications/impact of restricting use of the check-the-box on p.1, Form 1040 by unenrolled tax return preparers.	Yes (Partial)	The National Taxpayer Advocate encourages the IRS to implement this proposal after a complete analysis of the impact and complications. TAS looks forward to holding further discussions and providing assistance in this matter.
4. Mount a consumer protection campaign to educate taxpayers about the need to select competent preparers who can demonstrate competency.	Return preparers play a key role in increasing taxpayer compliance and strengthening the integrity of the U.S. tax system. The IRS believes it is critical to ensure a basic competency level for tax return preparers and to focus our enforcement efforts on identifying and stopping unscrupulous preparers. The IRS's efforts also include extensive outreach and education directed to return preparers and taxpayers. This includes dedicating resources to	Yes (Partial)	To educate taxpayers on the various preparer designations available, it is crucial that the IRS takes a proactive role in a public awareness campaign. This campaign should include the development and marketing of a publicly accessible and searchable preparer database. The database should list all preparers who have obtained valid PTINs with their basic information such as location, contact information, and credentials or qualifications. The database should also allow

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	educate taxpayers about the need to select preparers who can demonstrate competency.		the user to scroll over and obtain a basic description of each preparer credential or qualification along with any associated limitations in representation, such as the inability to represent taxpayers in Collection or Appeals.
5. Develop a research driven and Servicewide preparer compliance strategy similar in nature to the EITC preparer compliance strategy.	The IRS is still analyzing the results of the EITC preparer initiative to determine the effectiveness of the different treatments (e.g., due diligence visits, knock-and-talk visits, undercover shopping) . At this time, it is premature to develop a similar preparer compliance strategy without knowing whether the benefits of such a strategy would outweigh the associated costs of implementing the strategy.	No	The National Taxpayer Advocate believes the IRS should evaluate and share the results to date of its EITC preparer strategy. Considering the high percentage of EITC returns prepared by unenrolled preparers, the IRS can minimize burden to this low income taxpayer population if it evaluates the results as soon as the data is available and makes timely revisions to its strategy.
6. Recommend that Congress revise 31 U.S.C. § 330(a)(2) to clarify that the IRS has the authority to regulate unenrolled preparers.	The IRS proposed and Treasury accepted a legislative recommendation for the Green Book. The Commissioner and the NTA have testified on the need for legislation at a Senate Finance Committee hearing. The IRS has submitted	Yes	The National Taxpayer Advocate agrees that legislation is the best solution and will continue to recommend that Congress provide the IRS with the necessary authority to impose testing and continuing education requirements on

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	proposed language to Senate Finance and Treasury OTP.		unenrolled preparers.

2013 ARC – MSP Topic #6 – IDENTITY THEFT: The IRS Should Adopt a New Approach to Identity Theft Victim Assistance that Minimizes Burden and Anxiety for Such Taxpayers

Problem
In general, tax-related identity theft occurs when someone uses another individual's personal identifying information to file a false tax return to obtain an unauthorized refund. For the victims, the impact can be devastating and traumatic. The IRS takes much too long to fully unwind the harm suffered by victims and issue refunds to the legitimate taxpayers. Moreover, the IRS's specialized approach to resolving identity theft requires victims to interact with multiple IRS units.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Designate the Identity Protection Specialized Unit (IPSU) as the centralized function that assigns a single employee to work with identity theft victims until all related issues are resolved.	Critical to the IRS's efforts to assist identity theft victims is our Identity Protection Specialized Unit (IPSU). IPSU provides taxpayers with a single point of contact at the IRS via a specialized toll-free telephone line. Budgetary constraints do not allow for a single employee to be assigned as an individual point of contact for each victim of identity theft from receipt of the claim through determination and/or account resolution. The specialized teams throughout the enterprise acknowledge identity theft claims and provide contact information. The point of contact may be an individual or group of	Yes (Partial)	From inception, the National Taxpayer Advocate had envisioned the IPSU as operating similarly to TAS – with a sole contact person who shepherds the case through complete resolution. The IPSU reengineering effort in 2013 cited in the IRS response did not reflect the perspective voiced by TAS's representatives. As implemented, the IPSU serves as a single point of entry for ID theft victims but not a sole contact. Even in cases with a single issue worked by AM, TAS has seen instances where the victim has been transferred to multiple assistors within AM. The IRS cites budgetary constraints as a barrier to adopt

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	individuals trained and able to provide the information on the victim's case. In March 2013, an IPSU Reengineering effort involved those identity theft victims with unresolved issues in multiple organizations. A multi-function criteria was established and included in Internal Revenue Manual (IRM) 21.9.2.43 Multiple Function Criteria (MFC) - IDTX. The latest revision of this IRM section is March 7, 2014 and includes the procedures for multiple function criteria. Those cases meeting MFC, have a single point of contact (individual) in IPSU. The IRS continues to explore opportunities to improve the victim experience and is currently exploring opportunities and options to better serve victims of identity theft and the time it takes to resolve their case. Since then, we have proposed a major step centralize identity theft victim casework in W&I. The		the recommendation to assign a single employee to an ID theft victim's case. TAS's reply is that the IRS has no idea how many resources are tied up in duplicative efforts with its current approach.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	proposal, titled the W&I-SB/SE Compliance Realignment Initiative was issued in May of 2014. All IRS employees have been invited to comment on the proposal. The IRS also welcomes TAS input on the proposal. With the adoption of the proposal, as modified through the comment period, W&I would be wholly responsible for all identity theft victims' assistance work. By centralizing this function, it is anticipated that victims of identity theft will receive better service from the IRS. While budgetary and resource constraints prohibit a single point of contact, we believe the centralized W&I process will serve victims more timely and completely. We recognize the emotional impact identity theft victims experience and provide guidance to those employees who may work with these individuals. The Identity Theft Training and Awareness Briefing, taken annually by		

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	over 40,000 IRS employees with the potential of working with identity theft victims, has a section dedicated to the sensitivity of this issue and how to work with taxpayers. In addition, our IRMs include information on the need to be aware of the impact of these victims and how to handle the contact with an additional level of sensitivity and understanding. The IRS continues to recognize the importance and urgency of combating identity theft and providing victim assistance. Fighting identity theft is an ongoing battle for the IRS and remains a top priority. Identity thieves continue to find new ways to steal taxpayer's personal information and use it for their gain, such as refund fraud. Although we cannot stop all identity theft, we continually review our policies and procedures to ensure we are doing everything we can to curb further instances of		

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	identity theft, help those who have become victims, and detect and prosecute those who perpetrate refund fraud. The IRS is committed to helping identity theft victims and continues to improve on past accomplishments. In calendar year 2013, the IRS worked with victims to resolve and close approximately 963,000 cases and the time for resolving these cases is decreasing. This past fiscal year (FY) taxpayers who became identity theft victims had their situation resolved in roughly 120 days, far more quickly than in previous years. The IRS will continue to build on these improvements and take the necessary steps to meet new challenges going forward. We believe the report has omitted important factors when comparing TAS cycle time with that of cases worked under normal IRS procedures. A very high percentage of TAS identity theft casework involve		

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	TAS criteria 1-4 (economic hardship), which get high priority treatment when referred to an IRS function via an Operations Assistance Request (OAR). In these instances, the TAS caseworker sets the response time and the functions know they could be the recipient of a Taxpayer Assistance Order if they do not respond and take action timely. The priority TAS cases receive when sent to the functions via OARs and Identity Theft Assistance Requests (ITARs) could very well explain, at least in part, the difference in how long it takes TAS to resolve a case versus how long it takes IRS. In fact, the IRS plays an important role in this aspect of working a TAS case and a victory in reducing cycle time should be shared. We believe the information contained in the report citing results from past TIGTA reports paints an inaccurate picture of how the IRS currently works identity		

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	theft cases, as well as current cycle time and timeliness. The May 2012 TIGA report used a non-statistical, judgmental sample of only 17 cases closed prior to 2012, the results of which cannot be used to project to the entire population. Additionally, the September 2013 TIGTA report evaluated cases closed August 1, 2011, through July 31, 2012. While some specialized groups began operating in early 2012, they were not mandated to start processing cases until October 1, 2012. Therefore, it is suspect whether any of the cases worked by the specialized groups were included in either TIGTA sample. Each function's IRM contains guidance on resolving issues in the most efficient manner through the use of proper workload management and time utilization techniques. Timeliness is measured from the taxpayer's perspective; however, case processing		

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	timeframes are dependent upon case issues and complexities. Identity theft cases worked in AM generally differ in complexity from cases worked in Exam and Collection that might require additional documentation or analysis; therefore, setting the same timeliness measures across functions would not necessarily be reflective of the time needed to resolve cases in each function. We believe allowing each specialized group to adhere to its current timeliness measures represents the best possible service we can provide to all taxpayers who contact the IRS with identity theft issues. We acknowledge there was significant room for improvement in how we serviced identity theft victims and their cases in FY 2011 and FY 2012. However, the process improvements and additional staffing implemented for the 2013 filing season, as		

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	well as processes we have improved or added since that time, have improved timeliness and cycle time. The average number of days to close identity theft cases varied from 2009 to 2013; however, this past fiscal year taxpayers who became victims of identity theft had their situation resolved in roughly 120 days. The IRS has taken numerous steps to quickly identify and streamline its identity theft processes through a variety of reengineering initiatives. New procedures are in place to identify the legitimate taxpayer's return, correct taxpayer account data and initiate refunds to identity theft victims more quickly. One such procedure added the use of Electronic Fraud Detection System (EFDS) data as a tool to determine the true SSN owner, thus eliminating numerous research steps and improving efficiencies. Additionally, the IRS		

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	implemented new programming to identify returns with identity theft documentation attached. Cases are now generated directly to the specialized groups, reducing the amount of cases that pass through several areas. Also, new procedures requiring the IPSU to control and monitor cases crossing multiple functions were implemented to ensure these cases are worked more efficiently and to completion. As more review and analysis occurs, the IRS Privacy, Governmental Liaison, and Disclosure (PGLD) office will work with the other IRS functions to update and incorporate new procedures as necessary to further reduce the time it takes to work an identity theft case. The IRS appreciates the acknowledgement in the report of the enhancements to the Identity Protection PIN (IP PIN) program. The IP PIN is issued		

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	to select identity theft victims whose identities have been validated by the IRS. This allows legitimate returns to be processed and prevents processing of fraudulent returns, thereby mitigating processing delays in identity theft victims' federal tax return processing. This past year, in addition to increasing the number of taxpayers receiving the IP PIN via the legacy process, the IRS began testing new online applications. Also, this filing season the IRS began allowing taxpayers who have lost, misplaced, or never received their assigned IP PIN to retrieve their original IP PIN using an online application and eAuthentication process, which allowed them to file their returns without additional delays. The legacy IP PIN replacement process remained in effect for those taxpayers who were unable or unwilling to use the online application. The IRS will continue to look		

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	for ways to expand the use of this technology to assist victims of identity theft and protect those at highest risk.		
2. Develop a method of tracking cycle time from the perspective of the victim.	IRS functions currently calculate cycle time that reflects the taxpayer's perspective. AM captures the IRS received date of the second (valid) tax return and uses this date as the start date for calculating cycle time, whereas compliance functions generally use the receipt date of the identity theft affidavit or documentation as the start date for calculating cycle time. In addition, cases sent to another function are worked by IRS received date, not the date received in that unit. As such, we think current procedures do provide a holistic approach to casework and coincide with the victim's expectation of how their case should be worked. In addition, as noted above, there is a proposal to further centralize identity theft victims' work at the IRS. If the	Yes (Partial)	The National Taxpayer Advocate recognizes and appreciates the efforts by the IRS to work through its inventory of ID theft cases. Reducing the cycle time for ID theft cases in Accounts Management (AM) to 120 days is commendable, but does not paint a complete picture of the victim's experience. From years of working ID theft cases, the National Taxpayer Advocate knows that many ID theft cases involve multiple issues. While TAS cases are not necessarily representative of overall IRS cases, we suspect that a significant percentage of the IRS's identity theft cases involve multiple issues. Having AM complete its portion of the ID theft case in 120 days may be a noteworthy improvement over prior years, but it does not mean the taxpayer's case is fully

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	proposal is adopted, the IRS will be reviewing its processes from beginning to end to ensure that the needs of victims of identity theft are being met appropriately.		resolved in 120 days. Until the IRS can provide a cycle time that represents the taxpayer's experience in resolving all identity theft-related tax issues, the cycle time data the IRS provides based on AM cases should be viewed in the context of its limitations. It forces us to rely on third-party reports such as those issued by TIGTA, as imperfect as they may be.
3. Implement "timeliness" measures to ensure identity theft cases do not languish.	Each functional IRM contains guidance on resolving an issue in the most efficient manner through the use of proper workload management and time utilization techniques. Timeliness is measured from the taxpayer's perspective; however, case processing timeframes are dependent upon case issues and complexities. Identity theft cases worked in AM generally differ in complexity from cases worked in Exam and Collection that might require additional documentation or analysis and setting timeliness measures	Yes	The National Taxpayer Advocate believes the TAS approach – assigning a case advocate to "own" the case and providing a date certain for which various IRS functions must take action – can be replicated by the IRS. The National Taxpayer Advocate is pleased to learn of the IRS's plan to reorganize and centralize its ID theft victim assistance within W&I. She hopes that this new approach will mirror TAS's approach to handling cases, and she will continue to advocate on this point.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	across functions would not necessarily be reflective of the time needed to resolve cases in each function. We believe allowing each specialized unit to adhere to its current timeliness measures represents the best possible service we can provide to all taxpayers who contact the IRS with identity theft issues. However, the proposal to centralize victim assistance casework in W&I will include a revision of the related processes and measures.		
4. Develop an identity theft database or system accessible to all functions working on identity theft cases.	The IRS acknowledges that creating a servicewide platform for tracking and monitoring identity theft cases would assist in assessing inventory and measuring cycle time, as well as make it easier to share information across functions. The idea of an identity theft database has been discussed for several years. Current systems are diverse and designed specifically for the type of work performed by that	Yes (Partial)	IDRS is an antiquated system that is not ideal to use as a case management system. The National Taxpayer Advocate encourages the IRS to explore other options to track and manage IDT case inventory, and devote the resources necessary to do so.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	function; therefore, a new identity theft database designed to exchange information with multiple, existing databases would be complex. However, currently IRS employees can use the IDRS system to determine if there is ID theft activity. IRS will continue to use our current systems and explore ways to better control and track our inventory. In addition, the proposal to centralize victim assistance casework in W&I provides an opportunity to explore managing the caseload through a single system.		

2013 ARC – MSP Topic #7 – HARDSHIP LEVIES: Four Years After the Tax Court's Holding in Vinatieri v. Commissioner, the IRS Continues to Levy on Taxpayers it Acknowledges are in Economic Hardship and then Fails to Release the Levies

Problem
The IRS is required by law to release a levy that it knows is causing an economic hardship due to the financial condition of the taxpayer, and according to Vinatieri v. Commissioner, 133 T.C. 392 (2009), the fact that the taxpayer has unfiled returns does not justify proceeding with the levy. In 2011, despite Vinatieri, the IRS levied on the Social Security (SSA) and Railroad Retirement Board (RRB) benefits of nearly 67,000 taxpayers presumed to be experiencing economic hardship – taxpayers whose incomes were less than 250 percent of the federal poverty level. The IRS declined to spare accounts of almost 41,000 of these taxpayers – more than half – from the automated levy program because the taxpayers had unfiled returns. The median income of taxpayers subject to levies on their SSA or RRB in 2011 was at most about $17,500.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Establish quality review procedures that measure whether employees identified and considered the possibility that a taxpayer was in economic hardship before levying.	IRS procedures require the taxpayer to document and verify that a levy will cause economic hardship if issued. If the taxpayer verifies that the levy will cause economic hardship, the levy should not be issued. Both field and campus quality review programs currently monitor and measure whether our employees considered and verified the documentation provided by the taxpayer to establish that the levy would cause economic hardship.	Yes (Partial)	Taxpayers have the right to a fair and just tax system. That is, taxpayers have the right to expect the system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. The IRS response conditions this right on the taxpayer providing documentation, without acknowledging that the IRS can in some cases see for itself, by consulting its own databases, that the taxpayer is experiencing economic hardship.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
2. Establish quality review procedures that measure whether, in cases in which the employee identified economic hardship, the employee adhered to the Vinatieri decision by placing the account in Currently Not Collectible status rather than levying.	The IRS currently monitors and measures the quality of our ability to pay determinations and CNC case dispositions. Internal Revenue Manual (IRM) 5.16.1.2.9(9) for field collection and IRM 5.19.1.7.1.3 and 5.19.4.4.10 for campus collection emphasize that an account can be reported CNC-Hardship even if there is an unfiled return and that a levy cannot be issued or left in place to persuade a taxpayer to file unfiled returns in an economic hardship situation. Compliance with these IRM sections is monitored and measured currently.	No	Quality controls do not measure specifically whether the employee, once he or she identified economic hardship (which may have been by consulting IRS databases), placed the account into CNC.
3. Develop and publish IRM guidelines for how collection employees, on the basis of information in IRS and third-party databases, should consider the possibility a taxpayer is in economic hardship before issuing a	The IRS will not levy when a taxpayer has verified that the levy would cause an economic hardship. Additionally, the IRS's Currently Not Collectible models already rely on information in IRS databases to exclude certain cases from levy. However, we do not	Yes (Partial)	The National Taxpayer Advocate is pleased that the IRS, working with TAS, is revising IRM 5.11.1 pertaining to pre-levy considerations. Clarifying that levy determinations are made on a case-by-case basis, and that Revenue Officers (ROs) must exercise good judgment in

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
levy.	agree that the determination of economic hardship always can be based solely on information available in IRS and third-party databases. Rather, we believe that the information existing in IRS and third-party databases is insufficient to verify economic hardship generally and that the taxpayer must provide additional documentation before the economic hardship can be verified. The requirement that the taxpayer provide documentation is consistent with the statute and the regulations. However, the IRS is revising Internal Revenue Manual (IRM) 5.11.1 for Field Collection employees, clarifying the pre-levy considerations for taxpayers who document and verify economic hardship.		making the determination to levy, will be important elements of the revised IRM provision. Moreover, the National Taxpayer Advocate will advocate that the revised IRM provision clarify that if the RO can verify from the information available that the levy will cause an economic hardship, the levy will not be issued, because if there is economic hardship, the levy must be released under IRC § 6343(a)(1)(B). The National Taxpayer Advocate continues to believe the IRM should also require ROs to place an account in Currently Not Collectible (CNC) status once they have determined that a taxpayer is experiencing economic hardship, because that is the logical next step.
4. Adjust the FPLP low income filter to include accounts with unfiled returns.	The low income filter (LIF) is not determinative of economic hardship or inability to pay. If an economic hardship determination is made, the	Yes (Partial)	The National Taxpayer Advocate is troubled by the IRS's assertion that "the low income filter is not determinative of economic hardship or inability to pay"

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	employee will follow the procedures established based on the Vinatieri decision. To ensure that only the most accurate and up-to-date information is used when a Federal Payment Levy Program (FPLP) analysis is performed, we do not apply the analysis to cases in which the taxpayer has delinquent tax returns. While the IRS does not agree that accounts with unfiled returns should be included in the LIF generally, we will request a UWR adjusting the LIF to include certain taxpayers over age 65 or who are receiving SSI payments.		because it is inaccurate. The LIF is determinative of economic hardship. It was established on the basis of a research study that applied the IRS's formula for economic hardship to a representative sample of taxpayers in the Social Security FPLP population. The LIF is the result of that study. It was implemented because the IRS Deputy Commissioner of Services and Enforcement accepted the LIF as the proxy for economic hardship. The IRS'"s comment that it will adjust the LIF "to include certain taxpayers who are over age 65 or who are receiving SSI payments" is also troubling because it 1. implies that Supplementary Security Income (SSI) payments are subject to FPLP; and 2. does not reflect the Commissioner's commitment to the National Taxpayer Advocate to include in the LIF taxpayers receiving Social Security disability payments, provided they can be identified.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
			The National Taxpayer Advocate is ascertaining whether the Social Security Administration can extract those who receive Social Security disability payments from its list of benefit recipients. The National Taxpayer Advocate urged the IRS to reconsider its response pertaining to the LIF, noting these inaccuracies and inconsistencies, but the response remained unchanged. TAS was disturbed by the response and confirmed that the IRS is not levying on SSI payments, but the response indicates an incomplete grasp on the IRS's part of how it administers the FPLP and which taxpayers are affected by it and which are excluded. The National Taxpayer Advocate does not find this reassuring.
5. Inform collection employees of procedural changes described above by issuing a separate alert and a memorandum.	The IRS is revising Internal Revenue Manual (IRM) 5.11.1 for Field Collection employees to clarify the pre-levy considerations for taxpayers who document and verify economic hardship. When the revised IRM is published,	Yes (Partial)	The National Taxpayer Advocate is pleased that the IRS, working with TAS, is revising IRM 5.11.1 pertaining to pre-levy considerations. Clarifying that levy determinations are made on a case-by-case basis, and that Revenue Officers (ROs) must

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	a cover sheet identifying the material changes to the IRM also will be published.		exercise good judgment in making the determination to levy, will be important elements of the revised IRM provision. Moreover, we will advocate that the revised IRM provision clarify that if the RO can verify from the information available that the levy will cause an economic hardship, the levy will not be issued, because if there is economic hardship, the levy must be released under IRC § 6343(a)(1)(B). We continue to believe the IRM should also require ROs to place an account in Currently Not Collectible (CNC) status once they have determined that a taxpayer is experiencing economic hardship, because that is the logical next step.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
6. Update training materials and job aids to reflect the Vinatieri decision and the 2013 changes to IRM 5.19 and 5.11.	The IRS delivered training to address economic hardship reflecting the determinations made in the Vinatieri decision to Field Collection and ACS employees during the FY 2011 Continuing Professional Education. As per our current practice to update/develop Field Collection and Campus Collection training and eGuides to reflect changes to the Internal Revenue Manual, we will reflect any changes to the IRM in future training material.	Yes (Partial)	The National Taxpayer Advocate finds the IRS's commitment to adjust future training material only to the extent it revises the IRM disappointing. The IRS last trained its collection employees on the Vinatieri holding in 2011. Collection employees hired in the past three years do not necessarily know of the existence of the Vinatieri case or its implications. TAS and Low Income Taxpayer Clinic cases continually demonstrate that IRS collection employees disregard the holding in Vinatieri and require filing of returns before releasing levies. The IRS should offer the training on a regular basis. In addition, TAS recommends that training for collection employees include a video TAS is planning to produce in FY 2015 about economic hardship and the difficulty low income taxpayers and other special populations face in dealing with the IRS.

2013 ARC – MSP Topic #8 – RETURN PREPARER FRAUD: The IRS Still Refuses to Issue Refunds to Victims of Return Preparer Misconduct Despite Ample Guidance Allowing the Payment of Such Refunds

Problem

Unscrupulous preparers sometimes alter taxpayers' returns by inflating income, deductions, credits, or withholding without their clients' knowledge or consent, and pocket all or a portion of the inflated refund. Even though the taxpayer receives no financial gain from the fraudulent filing, he or she must still deal with the IRS in the aftermath. Return preparer misconduct is similar to identity theft, but the IRS treats victims of preparer fraud differently. When a taxpayer is victimized by identity theft, the IRS will "back out" the return filed by the perpetrator, process the true return, and pay out the refund claim. In preparer misconduct cases, the IRS has declined not provide full relief to victims, contending it would be inappropriate to issue a "second refund."

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Develop comprehensive guidance providing full relief to victims of return preparer fraud, including the issuance of a refund.	The IRS acknowledges that the perpetration of fraud by a tax return preparer is a very serious issue, and one that presents unique challenges for the IRS to address. The IRS agrees that comprehensive guidance is necessary to provide relief to taxpayers. Because each return preparer fraud case is fact-specific and there are numerous scenarios, a one-size-fits-all solution cannot work. The IRS has discussed with the NTA an approach that is being considered. The IRS is working through legal issues regarding financial	No	The National Taxpayer Advocate disagrees with the IRS assertion that there are outstanding policy and legal concerns to be addressed. On March 14, 2014, the Commissioner decided that the IRS will issue refunds to victims of preparer fraud who can provide to the IRS a copy of a police report (in addition to the other documentation previously required). He preferred this bright-line approach over a more comprehensive facts-and-circumstances approach. The Office of Chief Counsel has reiterated that there is no legal

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	accounting to inform comprehensive guidance associated with providing relief in some of these scenarios. Therefore, it is premature to develop the guidance at this time as we are still exploring policy options. In addition, the IRS is attempting to strike a balance between relief for taxpayers in appropriate situations and its role as a steward of federal tax dollars. To ensure that federal tax dollars are used appropriately, the Government Accountability Office performs audits of the IRS's financial statements. In developing guidance, the IRS is cognizant that its financial statements reflecting payments to make taxpayers whole must withstand an audit by the Government Accountability Office. Until the IRS is able to finalize the appropriate accounting policies and internal accounting procedures, the IRS is not in a position to develop the comprehensive guidance		impediment to the IRS issuing such refunds. The Chief Financial Officer has raised some questions about how to account for these refunds in a way that would not be considered a material weakness by the GAO, but these concerns can be addressed. In no way should they hold up the process of developing guidance to W&I employees to adopt the approach endorsed by the Commissioner. The National Taxpayer Advocate notes that some of these victims are awaiting refunds associated with their 2008 tax returns. It is unconscionable that the IRS has not developed procedures to issue such refunds, when there are no outstanding legal or policy issues. The National Taxpayer Advocate encourages the IRS to have procedures in place to begin issuing refunds to victims of preparer fraud by October 1, 2014. TAS is willing to work with W&I to develop

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	requested.		interim guidance. The IRS's failure to commence issuance of refunds to taxpayers by October 1, 2014 will result in her issuing a Taxpayer Assistance Order in every eligible TAS return preparer refund fraud case.
2. Direct TAS, W&I, Criminal Investigation, Chief Counsel, the Return Preparer Office, and the Office of Professional Responsibility to develop referral procedures for and establish a liaison to national tax preparation firms, to seek recovery of refunds for taxpayers defrauded by their employees or agents.	As noted in response to recommendation 8-1 above, the IRS takes tax return preparer fraud very seriously and is committed to determining whether, and under what circumstances, the IRS can legally reissue refunds to victims of preparer fraud. The IRS does not believe that a blanket, one-size-fits-all solution, i.e., providing full refunds to any taxpayer claiming to having been victimized, is appropriate given the multi-facetted nature of this problem. Rather, careful thought and consideration must be given to facts and to these situations to determine the appropriate IRS policy, and IRS has discussed with the NTA an	No	The National Taxpayer Advocate believes that the IRS should engage in dialogue with industry groups to explore ways to mitigate the impact to the federal fisc. For example, the tax preparation firms could be required to be insured against theft or other fraud perpetrated by its employees.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	approach that is being considered. Given that the IRS policy is still under consideration, we cannot agree to this recommendation. We will keep this recommendation in mind as we move forward.		

2013 ARC – MSP Topic #9 – EARNED INCOME TAX CREDIT: The IRS Inappropriately Bans Many Taxpayers from Claiming EITC

Problem

Section 32(k) of the tax code authorizes the IRS to ban a taxpayer from claiming the earned income tax credit (EITC) for two years if the IRS determines the taxpayer claimed the credit improperly due to reckless or intentional disregard of rules and regulations. This standard requires more than mere negligence on the part of the taxpayer and requires a determination of the taxpayer's state of mind. In 2011, the IRS imposed the ban on more than 5,000 taxpayers and did so contrary to IRS Chief Counsel guidance almost 40 percent of the time by banning taxpayers who simply did not respond to requests for substantiation of their claims. In a random sample of two-year ban cases, TAS found the IRS imposed the ban automatically 15 percent of the time, meaning no determination was made. The National Taxpayer Advocate does not support the Administration's proposal to permit the IRS to use math error authority in the context of these bans until the IRS improves its procedures to ensure its auditors impose the ban consistently with the statute. Moreover, Congress should clarify that IRS bears the burden of proving the taxpayer acted intentionally or recklessly with respect to his or her EITC claim.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Immediately suspend the application of IRM provisions (e.g., IRM 4.19.14.6.1.5) that permit automatic imposition of the two-year EITC ban or require the taxpayer to show why the ban should not be imposed.	The IRS is carefully looking at our processes to ensure we are applying the EITC ban in appropriate circumstances.	No	The National Taxpayer Advocate welcomes the IRS's commitment to review its processes to ensure that the two-year ban is properly applied, but regrets that the IRS declines to suspend automatic imposition of the ban pending such review, in light of the findings from our analysis of a random sample of two-year ban cases.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
2. In collaboration and consultation with the National Taxpayer Advocate, include on the Treasury Guidance Priority List regulations that explain when the IRS should impose EITC bans.	The IRS will suggest that, as part of the process for developing the Priority Guidance Plan, Treasury and the IRS consider whether additional guidance should be issued on the meaning of "reckless or intentional disregard of rules and regulations."	Yes	
3. Revise, in consultation with the National Taxpayer Advocate, the IRM provisions on the two year ban to take into account what is reasonable to expect of taxpayers who claim EITC. At a minimum, before imposing the two-year ban, examiners should be required to: a. Attempt to speak with the taxpayer; b. Determine whether the substantiation the taxpayer submitted is probative of the EITC claim or shows a sincere effort to prove	IRS currently corresponds with every taxpayer on which the ban is proposed. Also, IRM 4.19.13 already includes several references about contacting a taxpayer when additional information is needed, if a number has been provided. We agree to review and improve our IRMs as necessary. We will ensure two-year ban training is provided during annual CPE training to all examiners as well as penalty requirement training for the managers.	Yes (Partial)	The IRS agrees to review and improve its IRMs "as necessary," but prefaces this commitment with the observation that it already "corresponds" with every taxpayer on whom the two-year ban is proposed. TAS review of actual two-year ban cases shows that while the IRS sends letters to taxpayers, it often receives no response. This is not the appropriate level of "correspondence" in these cases. The IRS also notes the IRM refers to contacting taxpayers when additional information is needed, if a number has been provided. However, there is still no

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
the elements of EITC, even if the documentation is not listed in the IRM as acceptable substantiation or the documentation is insufficient, and c. Consider the role, if any, of a paid preparer in claiming disallowed EITC.			requirement that examiners attempt to speak to a taxpayer before imposing the two-year ban, nor does the IRS undertake to adjust the way it considers the substantiation taxpayers submit, or to consider the role of a paid preparer. Thus, TAS reserves judgment on any IRM changes that result from the IRS's review until it becomes clear what the IRS deems "necessary".
4. Conduct quality reviews of every case in which the IRS proposes to impose the two-year ban. One hundred percent quality reviews should continue for at least three years and until the IRS's failure to adhere to the terms of the statute and the IRM is corrected.	Managerial approval is required for two-year ban cases as stated in IRM 20.1.5.1.6, Managerial Approval of Penalties, and IRM 4.19.13.5.2 Managerial Approval of Penalties (this does not include a requirement to approve systemically imposed bans on cases with no responses). Therefore, the managers are already expected to conduct reviews of every case in which the IRS proposes to impose the two-year ban. We agree with the NTA that procedures were not followed correctly and	Yes (Partial)	The National Taxpayer Advocate is troubled by the IRS's response concerning managerial review. IRM 4.19.14.6.1 (January 1, 2013) is captioned, "EITC 2/10 Year Ban - Correspondence Guidelines for Examination Technicians (CET)." It says, "(4) Managerial approval is required for all 2/10 year ban cases (emphasis added)." The provision does not distinguish between bans systemically imposed and those not systemically imposed. However, the IRS in its response draws this distinction.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	consistently on each case. Therefore we will: • Issue a SERP Alert reinforcing that all two-year bans must have managerial approval on all manual cases and on systemically imposed two-year ban cases if correspondence is received. • Review a sample of all two-year ban closed cases bi-annually to ensure the managerial approval is present on manual cases and systemic cases that include a taxpayer response. The IRS will take immediate action to ensure that examiners and managers are reminded of existing Internal Revenue Manual (IRM) procedures that require appropriate documentation and managerial approval for manual application of the ban. The IRS will also include annual refresher training for examiners and managers and will implement a process to monitor adherence to procedures.		The IRS agrees to reinforce the rule requiring managerial approval, and to sample cases to insure approval is present, but only when the ban was manually imposed. The safeguard of managerial approval will therefore be absent in the very cases in which it is most needed – where there has been no communication from the taxpayer. With this approach, the IRS sanctions a procedure in which a computer will draw an inference about a taxpayer's state of mind, and the IRS will impose the two-year ban without any human intervention. The National Taxpayer Advocate remains convinced that this approach is inconsistent with Congress's intent when it authorized the IRS to impose the two-year ban.

2013 ARC – MSP Topic #10 – INDIAN TRIBAL TAXPAYERS: Inadequate Consideration of Their Unique Needs Causes Burdens

Problem
In filing season 2013, the IRS wrongly flagged tax returns filed by Indian tribal members as fraudulent because they shared characteristics that the IRS has identified as indicators of fraud. Although the National Taxpayer Advocate's 2008 Annual Report to Congress applauded IRS outreach to Indian Nations as exemplary, it is unclear if all IRS functions are responsive to their needs. In certain cases, IRS operating divisions (ODs) remain unaware of particular characteristics and needs of Indian taxpayers, which can lead to unnecessary contact with the IRS and unwarranted audits, tax assessments, or penalties.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Train all compliance employees about the culture and needs of Native American taxpayers, rendering assistance as required by this population, after consulting with and referring taxpayers to TAS when necessary.	The IRS is in the process of creating a cross-functional working group on issues of Indian individuals, parallel to the ITG function on tribal entities. This working group will develop training for appropriate campus and field compliance employees.	Yes	The National Taxpayer Advocate applauds the IRS for establishing a cross-functional working group to handle Indian individual tax issues as suggested by TAS in the 2013 Annual Report to Congress. It is her understanding that when the team is formed TAS will be invited to participate. TAS is encouraged that the group will develop training materials on the unique culture and needs of Indian taxpayers. TAS suggests the working group use the online course jointly developed by federal agencies, "Working Effectively with Tribal Governments," as a guide for

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
			the training materials. The National Taxpayer Advocate urges that development of this training be a top priority of the working group so the IRS can deliver it to employees as soon as possible. TAS further recommends that, in addition to developing training for campus and field compliance employees on the culture and needs of Indian taxpayers, the cross-functional group oversee its implementation.
2. Establish a cross-functional working group on issues of Indian individuals, parallel to the ITG function that focuses on tribal entities.	Consistent with the 2013 Annual Report to Congress, the IRS is in the process of creating a cross-functional working group to handle Indian individual issues.	Yes	The National Taxpayer Advocate applauds the IRS for establishing a cross-functional working group to handle Indian individual tax issues as suggested by TAS in the 2013 Annual Report to Congress. It is her understanding that when the team is formed TAS will be invited to participate. TAS is encouraged that the group will develop training materials on the unique culture and needs of Indian taxpayers. TAS suggests the working group use the online course jointly

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
			developed by federal agencies, "Working Effectively with Tribal Governments," as a guide for the training materials. The National Taxpayer Advocate urges that development of this training be a top priority of the working group so the IRS can deliver it to employees as soon as possible. TAS further recommends that, in addition to developing training for campus and field compliance employees on the culture and needs of Indian taxpayers, the cross-functional group oversee its implementation.
3. Consult with the ITG function before implementing filters or similar programs (such as those operated by Wage & Investment Pre-Refund, AUR, ASFR, Correspondence Exam; Field Exam) that could have the effect of erroneously targeting Indian taxpayers.	The IRS is respectful of the nation's many diverse backgrounds and strives to develop of compliance filters that do not create bias against particular segments of the population. TPP filters are constantly evaluated on both current and historic data to prove that selected samples do not arbitrarily select compliant taxpayers. With respect to this testing, special attention is paid	Yes	The National Taxpayer Advocate is pleased that the IRS now requires any changes to existing filters or development of new filters to receive managerial and executive approval via the TPP Filter Change Request Form. Nevertheless, ITG should also be involved in this evaluation and approval process to lessen the negative impact of such filters on groups of compliant

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	that no group is chosen based on individual characteristics. Additionally, processes have recently been implemented that any changes to existing filters or development of new filters requires managerial and executive approval. With respect to the Examination Program, all Individual Master File returns are filtered through the Dependent Database (DDb) application and scored during pipeline processing. The DDb is a 'Rules Based' selection application that is designed to identify potentially non-compliant returns during return processing. DDb uses data from Department of Health and Human Services, Social Security Administration and internal data. Returns filed by Native American taxpayers are subject to the same selection criteria and filters as all other returns. In order to assist Native Americans selected for audit, the Examination Program provides		taxpayers, such as Indian taxpayers.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	additional guidance to the Native American population. Indian Tribal Government (ITG) zip codes are utilized to facilitate the inclusion of the Form 13588 (Native Americans and Earned Income Credit) with audit notices sent to taxpayers. The Form advises the Native American taxpayers of the alternative documentation they can provide to support audit issues. In FY 2013, approximately 2,500 returns were identified by correspondence examination as Native American returns. In addition, once it is established, we will coordinate with the cross-functional working group created to handle Indian individual issues.		
4. Correct procedures that result in routine failure to comply with ITG directives.	The IRS is in the process of creating a cross-functional working group on issues of Indian individuals, parallel to the ITG function on tribal entities. This working group will develop training for	Yes	The National Taxpayer Advocate appreciates that the IRS and Treasury Department issued interim guidance regarding per capita distributions made to members of Indian tribes from funds held

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	appropriate campus and field compliance employees.		in trust by the Secretary of the Interior. This guidance, along with recently issued Rev. Proc. 2014-35, which establishes safe harbors for benefits provided under certain housing, educational, elder and disabled, cultural and religious, and other qualifying assistance programs of Indian tribal governments, highlights the IRS's commitment to properly address Indian tribal issues. TAS looks forward to working with the IRS in this ongoing effort to ensure that all IRS operating divisions consistently apply the appropriate cultural sensitivity and relevant tax guidance.
5. Finalize guidance on tribal documentation of qualifying children, frivolous claim penalties, integral parts of governments including tribal corporations, general welfare exclusion of tribal distributions, and other questions as they	With respect to tribal documentation of qualifying children, the IRS issued a SERP alert that should be incorporated into the IRM under normal procedures. With respect to frivolous-claim penalties as they apply to Indian-tribe members asserting sovereignty arguments, the	Yes	TAS looks forward to working with the IRS in this ongoing effort to ensure that the appropriate cultural sensitivity and relevant tax guidance are applied consistently throughout all IRS operating divisions.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
arise.	IRS has not initiated any guidance. The IRS Office of Chief Counsel has an ongoing regulations project (number 45 on the priority guidance plan) for providing criteria for treating an entity as an integral part of a state, local, or tribal government; Chief Counsel is also working on regulations providing criteria for what constitutes a governmental plan under section 414(d), which will provide information to consider in working on the integral part regulations project. IRS and Treasury published a notice and proposed revenue procedure requesting comments on tribal government programs that provide benefits to tribal members, and will publish a final revenue procedure to establish safe harbors deeming benefits identified in the revenue procedure to be based on need and, in some cases, not to be treated as compensation for services. On		

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	March 10, 2014, the IRS and Treasury Department issued interim guidance regarding per capita distributions made to members of Indian tribes from funds held in trust by the Secretary of the Interior.		

2013 ARC – MSP Topic #11 – COLLECTION STRATEGY: The Automated Collection System's Case Selection and Processes Result in Low Collection Yields and Poor Case Resolution, Thereby Harming Taxpayers

Problem

The Automated Collection System (ACS) is a computerized inventory system that manually and systemically sends notices to taxpayers, issues liens and levies, and answers calls in an effort to resolve balance due accounts. ACS collects tax largely by offsetting taxpayers' refunds and eliminates much of its inventory by passing cases to other parts of the IRS. ACS's failure to resolve cases can be attributed in part to its counterproductive approach to working cases and the types of cases it is assigned. Rather than applying the appropriate type of contact for each taxpayer, ACS generally relies on notices of intent to levy or systemically generated levies, which are often not effective. ACS should first attempt to talk to the taxpayer by making an outgoing call or sending a notice, and then consider a levy. This strategy would reduce the risk of placing the taxpayer in economic hardship, prevent the liability from becoming too big to be resolved, and reduce the need for more extreme collection measures.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Better identify groups of taxpayers that would more likely respond best to a particular collection action or communication.	With its scarce resources, the IRS already uses filters to identify inventory with various characteristics and routes them appropriately based on these characteristics. Using this method, we are able to best prioritize the workload and better match the priority inventory to the correct work stream. Given the different work streams require a different level of effort and skill of employee, ensuring our most expensive work streams are concentrating on the highest	No	The IRS response implies that its collection strategy is adequate and limited and that resources prevent it from doing anything beyond the status quo. The National Taxpayer Advocate finds this position unconvincing and profoundly disappointing. Although the IRS's budget is not what we would want it to be, IRS resources are hardly "scarce." A reconsideration of its collection approach may produce more revenue along with better resolutions for

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	priority and most complex work is essential for effective resource management. The IRS is, however, looking broadly at collection activities, and if research indicates that this recommendation would be helpful, the IRS will incorporate the recommendation into any redesign of collection processes.		taxpayers, and thus convince Appropriators that the IRS will effectively utilize additional collection resources. However the IRS has yet to make any commitment to alter its existing collection practices. An approach that places less emphasis on levies, identifies which taxpayers would best respond to other collection approaches, and initiates those approaches early in the life of the debt would yield effective contacts and better case resolutions, potentially resulting in more revenue collected. Alternatively, holding steadfast to ACS's current collection approach (i.e., its tendency to rely on levies or move cases to the Queue) unnecessarily harms taxpayers and creates needless work for the IRS, as well as being ineffective at collecting revenue.
2. In an attempt to establish contact with the taxpayer, include a soft notice in its systemic	The IRS currently sends taxpayers with accounts in the Automated Collection System (ACS) pipeline notices of	No	Although taxpayer accounts placed in ACS have received notices regarding payment options through the IRS notice

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
procedures that would discuss payment options up front.	payment options. Additionally, Publication 594 is enclosed with the Final Notice that is sent to the taxpayer before enforcement action is taken. Publication 594 clearly identifies ways to make payment, including options if the taxpayer cannot pay, in plain language. Also, the IRS webpage provides taxpayers with information on the payment options available and the Office of Taxpayer Correspondence (OTC) is currently updating all IRS written correspondence to direct the taxpayer to the webpage for information on payment options. This OTC initiative should reduce the cost of mailing including postage and paper. The IRS is, however, looking broadly at collection activities, and if research indicates that this recommendation would be helpful, the IRS will incorporate the recommendation into any redesign of collection processes.		process, ACS itself often moves quickly to enforcement action and sends out Letter 11, Final Notice, Notice of Intent to Levy and Your Notice of a Right to a Hearing, followed by a levy. This rush to enforcement action is troubling, because months may have elapsed since the last notice and assignment to ACS. A soft notice providing information on a variety of payment options would afford taxpayers another opportunity to resolve their tax issues before the IRS starts enforcement actions.
3. Send out a monthly (or	Taxpayers currently are	No	There is no data on the

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
no less than quarterly) notice to taxpayers whose cases are in the Queue that informs them of the tax owed and penalty and interest accruals as well as payment options.	provided with 2-4 notices when they have a balance due including the Collection Due Process (CDP) before routing their case to the Inventory Delivery System and subsequent assignment to ACS or the queue. Additionally, reminder notices are sent yearly. There is no data to suggest that sending more notices would produce better results. The 2-4 notes we send are within the statutory requirements and there is no evidence that the cost of issuing more notices would be offset by increased collection revenue from those notices. Thus, we believe the current process for ensuring taxpayers are aware of their payment liabilities is sufficient and is in conformance with applicable statutes. Additionally, given our limited resources, the recommendation to provide monthly or quarterly notices to taxpayers is cost prohibitive. The IRS is, however, looking broadly at		effectiveness of monthly or quarterly reminder notices to taxpayers regarding their amount due, because the IRS has never tested or piloted monthly or quarterly notices to find out if they bring in dollars. However, the practice of not sending a bill after sending two to four notices is out of line with the private sector's bill-collecting techniques (i.e., credit card companies send monthly bill statements). Further, a research study in the National Taxpayer Advocate's 2013 Annual Report to Congress found most employment tax payments received while the accounts were in queue status were received within about 35 days of being placed in the queue, suggesting that some resulted from a prior notice. This further supports the recommendation that the IRS consider sending additional notices to taxpayers assigned to the queue, particularly notices that

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	collection activities, and if research indicates that this recommendation would be helpful, the IRS will incorporate the recommendation into any redesign of collection processes.		emphasize payment alternatives and the impact of late payment penalties and daily compounded interest.
4. Create and properly train a core ACS unit that can work and resolve small business cases when the field cannot take on more assignments.	SBSE ACS currently works small business cases in its regular work streams. ACS expanded the small business cases from one SBSE call site to the top priority in all SBSE call sites several years ago. All SBSE ACS employees are trained to work these accounts and small business cases are the top priority in the SBSE ACS hierarchy of accounts. The IRS is, however, looking broadly at collection activities, and if research indicates that this recommendation would be helpful, the IRS will incorporate the recommendation into any redesign of collection processes.	No	The National Taxpayer Advocate does not understand why the IRS insists on placing small business cases involving trust fund taxes in the SB/SE ACS group. They would clearly be worked more efficiently in the Collection Field function, which is better equipped to work these cases (i.e., it has more authorities and greater latitude to resolve these cases than ACS). Because the field is better equipped to work these cases, it achieves better results.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
5. Expand the guidance under IRM 5.19.1, Liability Collection, Balance Due, to require ACS assistors to present all collection alternatives to the taxpayer upfront in all cases.	All ACS Collection Representatives are trained to discuss payment options with the taxpayer. Once the ACS employee has identified the issue with the taxpayer, the employee is trained to discuss payment options with the taxpayer. Offering collection alternatives before the issue and facts of the case can mislead taxpayers. They may think an option is appropriate for them only to find out later that not all taxpayer situations allow the taxpayer to qualify for all payment options. The IRS is, however, looking broadly at collection activities, and if research indicates that this recommendation would be helpful, the IRS will incorporate the recommendation into any redesign of collection processes.	No	The National Taxpayer Advocate is not suggesting that ACS assistors do not obtain all the facts of the taxpayer's situation. However, rather than pushing for full payment, ACS assistors should be permitted to discuss all collection options early on in their discussion with the taxpayer, including the possibility of an installment agreement. Insisting on full payment is not realistic in many situations, and, as the ACS data illustrate, it has not yielded and will not yield effective tax collection.

2013 ARC – MSP Topic #12 – COLLECTION PROCESS: IRS Collection Procedures Harm Business Taxpayers and Contribute to Substantial Amounts of Lost Revenue

Problem

The withholding and payment of trust fund taxes are vital components of the voluntary compliance system. Trust fund tax delinquencies can quickly become unmanageable for business taxpayers; yet the IRS provides inadequate attention and service for emerging trust fund collection cases. The IRS persists in assigning these cases to employees who are not fully equipped to resolve them. Consequently, important collection options (e.g., installment agreements and offers in compromise), are exceptionally rare and are frequently not available to business taxpayers until their debts become uncollectible. The National Taxpayer Advocate is troubled by the high percentage of business taxpayers who cannot resolve their tax problems in response to IRS collection notices or contacts with the Automated Collection System (ACS) and believes the IRS could resolve many of these accounts through a more proactive, service-oriented approach.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. IRS must reconcile its case assignment practices involving IBTF tax delinquencies with the authorities delegated to employees assigned to work these accounts. Trust fund tax delinquencies should not be assigned to employees who are not fully empowered to resolve them. Current IRS practices create undue burden on taxpayers and contribute to significant delays in	The IRS is committed to providing the highest levels of taxpayer service. We are contacting business taxpayers who may not have made their required Federal tax Deposits (FTDs) either in-person or through correspondence. Our assignment practices (including the decision of whether to reach out in-person or through correspondence) are based on a comprehensive analysis of accounts to determine the priority/complexity of the case. Contacts made through correspondence are worked by	No	One common theme running through the IRS response is that current budgetary constraints have limited the resources Collection has available to develop and implement new approaches to providing effective treatments on collection accounts. Consequently, the IRS seems to be taking the position that the current processes in place to address employment tax delinquencies are adequate – despite the considerable amount of data and analysis provided in this report that

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
case resolution.	SBSE ACS employees. All SBSE ACS employees are trained to work IBTF cases. Trust Fund Tax Delinquencies cases are a top priority in SBSE ACS case hierarchy. And, beginning in March 2014, certain business taxpayers with liabilities of $25,000 (combined taxes, penalties and interest) or less can establish an installment agreement through the on-line payment agreement toolkit. The IRS is, however, looking broadly at collection activities, and if research indicates that this recommendation would be helpful, the IRS will incorporate the recommendation into any redesign of collection processes.		indicate current treatments are clearly ineffective. The IRS response indicates an increased emphasis in the use of FTD Alerts to intervene earlier in employment tax delinquencies. In fact, research conducted by the IRS has revealed that for every dollar spent on revenue officers working FTD Alerts, future FTD non-compliance decreased by $69. Yet, IRS data indicate that in FY 2013, the IRS devoted only a very minute percentage of its CFf resources to FTD Alerts. The employment tax program is a vital component of the nation's system, and the current IRS strategy to collect delinquent employment taxes is not effective.
2. IRS should develop and test a new "second" notice for business taxpayers with trust fund tax debts, with an expanded focus on the availability of collection payment options. The	Currently, business taxpayers receive a statutory notice of deficiency and a Final Balance Due Notice. All taxpayers that have outstanding balances also receive Letter 3228, Annual Reminder Notice, reminding them of their outstanding liability	No	As discussed in the MSP report, very few business taxpayers are successfully obtaining Installment Agreements in the IRS collection notice process. A review of the notices provided to these taxpayers reveals very

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
notice should proactively invite taxpayers who have not acted since receiving the first notice or who are experiencing financial difficulties to contact the IRS to discuss payment options and should provide more information about the options that may be available. This information should be on the front page of the notice.	and we recently started sending certain taxpayers with outstanding balances a "soft" notice after completing a successful pilot. The Final Balance Due Notice provides basic collection information, contact information and some payment alternatives. Publication 594, which is enclosed with many of our notices, includes an extensive discussion of payment options and the Letter 3228 provides taxpayers with a contact number if they disagree with the balance or would like to self-correct through other collection options. Current budgetary constraints prevent the IRS from developing or testing additional collection notices at this time, but we will review our existing notices to determine if more should be done to provide available payment options.		little in the way of opportunity or information that encourage the taxpayers to come forward and negotiate payment arrangements with the IRS. In a tight budgetary environment, we question whether or not the IRS can afford to not do more to obtain better business results, and provide better service to BMF taxpayers at this point in the collection process.
3. IRS should develop and implement an initiative to test the benefits that may be obtained through	As your recommendation acknowledges, there is more inventory in the Collection queue than the IRS has	No	As discussed in the MSP report, the IRS appears to be losing a great deal of potentially collectible collection inventory

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
continued efforts to reach out to IBTF taxpayers whose accounts have been assigned to the Collection Queue. Through regularly issued "reminder" notices, similar to the new notice described in Recommendation 2 above, the IRS may encourage taxpayers to self-correct delinquencies on accounts that would otherwise sit inactive in the Queue.	resources to work each week. However, the risk level of the cases in the queue is reset each week, helping our employees to prioritize the cases selected to be worked. All business taxpayers who have a case in the queue have received a statutory notice of deficiency and a Final Balance Due Notice. The Final Balance Due Notice provides basic collection information, contact information and some alternatives, such as installment agreements. Additionally, all taxpayers that have outstanding balances receive Letter 3228, Annual Reminder Notice, reminding them of their outstanding liability and providing them with a contact number if they disagree with the balance or would like to self-correct through other collection options. Current budgetary constraints, prevent the IRS from developing or testing additional collection notices at this time. The IRS is, however,		due to case inactivity and long delays in case assignments. The National Taxpayer Advocate is keenly aware of the budgetary constraints that have been imposed on the IRS, and has addressed inadequate funding for the IRS as a most serious problem in the 2013 Annual Report to Congress. However, the reality of limited resources intensifies the need for the IRS to examine its case assignment practices, policies and procedures to ensure that existing resources are delivering the maximum benefits to the government and its taxpayers. The IRS can and should do more in this area.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	looking broadly at collection activities, and if research indicates that this recommendation would be helpful, the IRS will incorporate the recommendation into any redesign of collection processes.		
4. IRS should allow "conditional IAs" for business taxpayers with trust fund tax debts. These IA procedures would allow ACS, CSCO, and AM to set up IAs for taxpayers' unfiled returns, with a requirement to file the returns included as a condition of finalizing the agreement within a reasonable period.	A taxpayer is not prevented from making voluntary payments while they prepare and file delinquent returns. The taxpayer can designate these voluntary payments to their maximum benefit. However, granting a "conditional IA" is not workable. First, without knowing the total extent of the trust fund liability, ACS, CSCO and AM can't determine if the case meets their criteria for working an IBTF case, whether the taxpayer qualifies for IBTF Express treatment, or whether a TFRP determination needs to be made. AM and CSCO are not well suited for working cases that require follow-up actions. Additionally, if we grant the IA, conditional or otherwise,	No	The IRS seems to recognize the need to provide business taxpayers better access to installment agreements, and indicates that it has recently modified the online payment agreement (OPA) application accordingly. However, through May 2014, the IRS reports only 16 IAs involving business-related taxes have been issued via the OPA, while overall business-related IAs have declined by 22 percent from the same time in FY 2013. The concept of the "conditional IA" is not substantially different than the approach currently used in the OIC program to allow taxpayers the opportunity to expeditiously file any delinquent returns while the

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	we cannot default it if the taxpayer fails to file the delinquent returns as promised. The IRS is, however, looking broadly at collection activities, and if research indicates that this recommendation would be helpful, the IRS will incorporate the recommendation into any redesign of collection processes.		OIC is being considered, but before acceptance of the OIC. A similar approach could also work with IAs. If AM, CSCO and ACS cannot provide adequate service to IBTF taxpayers, these functions should not be assigned these cases.
5. IRS should revise the collection procedures detailed in IRM 5.7.2.2, Issuance of Letter 903, and expand the use of the L-903 process to serve as a delinquency prevention tool. This practice would allow the IRS to clearly identify high-risk, repeat delinquents, and expedite these cases to Revenue Officers for appropriate attention.	The IRS has recently expanded the early intervention program using the soft letter notice in an effort to contact taxpayers earlier in the delinquency process and educate the taxpayer on the deposit requirements before the accounts become actual field Federal Tax Deposit (FTD) Alerts. The results of the soft letter notice indicate that taxpayers who do not receive a soft letter notice consistently had a higher percentage of late filed returns than those to whom the letter is sent. When a taxpayer is issued a Letter 903, an "L" indicator is listed on the	No	The IRS response acknowledges that the recommendation to increase use of the L-903 process would indeed expedite cases involving taxpayers with multiple episodes of employment tax delinquencies to revenue officers, but astonishingly seems to question the relative priority these high-risk cases should have in collection strategy. Yet, the IRS response also notes that the Accounts Management, Compliance Services Collection Operation, and Automated Collection System operations have limited criteria for working these cases,

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	account. When additional modules generate that have an "L" indicator, it bypasses the collection queue and goes directly to the Group Manager's (GM) hold file for assignment. If the account is already assigned to a Revenue Officer (RO) or in the GM hold file, the additional module will be accelerated to attach with the other modules. Currently ROs have numerous priority cases in their inventory. Increasing the number of case prioritizations would not necessarily increase the efficiency or quality of the casework when faced with limited resources due to budgetary limitations. The IRS is, however, looking broadly at collection activities, and if research indicates that this recommendation would be helpful, the IRS will incorporate the recommendation into any redesign of collection processes.		and "AM and CSCO are not well suited for working cases that require follow-up actions."

2013 ARC – MSP Topic #13 – COLLECTION STATUTE EXPIRATION DATES: The IRS Lacks a Process to Resolve Taxpayer Accounts with Extensions Exceeding its Current Policy Limits

Problem

As of December 31, 2013, 2,371 taxpayers remain subject to IRS collection action because of waivers of the applicable statutory period for collection of tax liabilities, which violate the IRS policy limit of five years. On October 30, 1991, the IRS set a limit of five years on collection statute extensions entered in connection with installment agreements (IAs) that allowed taxpayers to pay their debts over time. Before January 1, 2000 (the effective date of the IRS Restructuring and Reform Act of 1998 (RRA 98)), how- ever, IRS collection personnel commonly solicited extensions of any collection statute beyond five years when it did not appear the taxpayer could pay before the collection statute expiration date (CSED). In connection with a directive from the National Taxpayer Advocate, the IRS and TAS worked together to investigate these CSED extensions. The majority of these lengthy CSED cases burden taxpayers, who do not appear able to pay or resolve their debts through collection alternatives. The National Taxpayer Advocate's chief concern is the IRS's failure to cancel these unreasonable CSED extensions that do not comply with current policies. The IRS has already spent over four years trying to fix this problem, and no resolution is in sight.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. By April 15, 2014, cease collection of payments on all accounts where the collection period was extended in violation of the IRS 1991 waiver policy.	Although these pre-1999 extensions of the collection period are valid under the law and regulations, the IRS is working collaboratively with TAS and the Office of Chief Counsel to explore alternatives to address these accounts. These efforts include performing a cost/benefit analysis to determine if the cost of collecting amounts on these accounts exceeds the monetary benefits achieved.	Yes	On May 6, 2014, the National Taxpayer Advocate met with IRS leaders regarding the status of the 3,853 taxpayers who remain subject to IRS collection action because of waivers for the applicable collection period for tax liabilities that violate the IRS policy limit of five years. During this meeting, the National Taxpayer Advocate and IRS leaders discussed a possible approach to resolving these cases (i.e., stop collection and

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			clear the remaining liabilities on the accounts). In the next month or so, the National Taxpayer Advocate and the Commissioners of W&I and SBSE will present this approach to the IRS Commissioner for final decision. The National Taxpayer Advocate is hopeful that the IRS has a workable solution to this long-festering problem.
2. By June 30, 2014, abate all such extended CSED accounts under the authority vested in the Commissioner under the Internal Revenue Code	Although these pre-1999 extensions of the collection period are valid under the law and regulations, the IRS is working collaboratively with TAS and the Office of Chief Counsel to explore alternatives to address these accounts. These efforts include performing a cost/benefit analysis to determine if the cost of collecting amounts on these accounts exceeds the monetary benefits achieved.	Yes	On May 6, 2014, the National Taxpayer Advocate met with IRS leaders regarding the status of the 3,853 taxpayers who remain subject to IRS collection action because of waivers for the applicable collection period for tax liabilities that violate the IRS policy limit of five years. During this meeting, the National Taxpayer Advocate and IRS leaders discussed a possible approach to resolving these cases (i.e., stop collection and clear the remaining liabilities on the accounts). In the next month or so, the National Taxpayer Advocate and the

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			Commissioners of W&I and SBSE will present this approach to the IRS Commissioner for final decision. The National Taxpayer Advocate is hopeful that the IRS has a workable solution to this long-festering problem.

2013 ARC – MSP Topic #14 – COLLECTION DUE PROCESS HEARINGS: Current Procedures Allow Undue Deference to the Collection Function and Do Not Provide the Taxpayer a Fair and Impartial Hearing

Problem
IRS procedures for Collection Due Process (CDP) hearings deprive taxpayers of a fair and independent review of IRS collection actions. A CDP Hearing Officer must verify that the IRS followed the law and administrative procedures, and consider whether the collection action balances the need for efficient tax collection with the taxpayer's concern that the action be no more intrusive than necessary. However, Hearing Officers may overlook this balancing test and rely too heavily on the determination made by the Collection function.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Require Collection to attempt to contact the taxpayer, preferably by phone, before issuing a CDP notice.	The IRS does attempt to contact the taxpayer prior to issuing a Collection Due Process (CDP) notice. Often this is done by issuing collection notices or the IRS may attempt direct contact with the taxpayer by phone or in person. If the taxpayer responds to these contact attempts, the IRS can assist them in resolving the account. If the taxpayer does not respond to these attempts to contact, the IRS must initiate the next most cost effective action. Direct contact by phone is not always the most effective next action, in addition, the current budget environment does not provide sufficient	No	Although the IRS does attempt to contact taxpayers before issuing a CDP notice, it rarely does so in a way that provides a meaningful opportunity to work with Collection. Simply sending a balance due notice does not educate taxpayers about the possibility of working with Collection on alternatives such as an offer in compromise. The IRS has a chance to have meaningful contacts with the taxpayer before issuance of the CDP notice, but it declines to do so. The IRS's practice of issuing the CDP notice so early in the notice stream is what sets up Appeals to be the first meaningful contact. This

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	resources to make individual contact. As noted in the report, the IRS issued over 3.6 million CDP notices in FY 2012. Issuance of a CDP notice is also an attempt to contact the taxpayer. Some taxpayers will respond to the notice and resolve their account without requesting a CDP hearing. Few taxpayers request a CDP hearing. As noted in the report only 1.3% of taxpayers issued a CDP notice in FY 2012 requested a CDP hearing.		practice creates an endless cycle where Appeals receives a CDP case and then sends it back to Collection in order to not be the first meaningful contact.
2. Direct the taxpayer to send his or her CDP request to Appeals instead of Collection. If this is not done, require Collection to send cases to Appeals immediately upon receipt of the CDP request.	IRS believes taxpayers sending their appeals directly to the Office of Appeals is not appropriate because it would cause the CDP appeal process to be different than the longstanding appeals process for all other types of cases Appeals considers. This would set a precedent that Appeals is the starting point for taxpayer interaction with the IRS rather than the traditional role of Appeals entering the process to resolve a dispute, which is	No	The National Taxpayer Advocate is disappointed by the IRS's response, which fails to recognize that the CDP process is a unique Appeals process created by statute. In creating CDP hearings, Congress specifically required the IRS to provide an independent hearing officer in Appeals and specifically laid out what the hearing officer must consider. Sending CDP requests to Collection undermines the independence of the entire

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	contrary to Appeals' mission of resolving tax controversies. Taxpayers state on their CDP hearing request the resolution they are seeking. When the resolution is routine, e.g., an installment agreement, Collection employees can explain the requirements to the taxpayer and address such issues more quickly than if the taxpayers are required to go first to Appeals. If the parties enter into a satisfactory resolution, there is no dispute at issue, and the taxpayer should not be required to include Appeals in the process.		CDP process.
3. Consider untimely CDP requests as requests for an equivalent hearing if they qualify. Notify the taxpayer by letter and attach a list of questions and answers about equivalent hearings.	The CDP regulations were amended in 2006 to require taxpayers to specifically request an EH, if a CDP hearing request is not timely. To ensure taxpayer rights, language was also added to paragraph (c)(2), Q&A-C7 stating that the Service would notify the taxpayer his/her CDP hearing request was untimely and offer the taxpayer an equivalent hearing.	No	The IRS sets up unnecessary barriers to taxpayers receiving an equivalent hearing. It is important to educate taxpayers about this option when they do not qualify for a CDP hearing.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	IRM Part 5 requires contact with the taxpayer, verbally or in writing, to determine the taxpayer's interest in an EH in such cases. To make it simple for the taxpayer, the IRS does not require the taxpayer to submit a second written request for a hearing. The 2006 amendment to the regulations was intended to address the large number of no-response equivalent hearings in Appeals. Once many taxpayers discovered that they were only entitled to an equivalent hearing and not a CDP hearing, they did not want an equivalent hearing and would not respond to efforts by Appeals to conduct a hearing. Publication 594 and Form 12153, sent with all CDP notices, provide the taxpayer with information about the nature of an EH. When a contact is made with a taxpayer who would qualify for, but does not request an EH, Collection informs the taxpayer that a CDP hearing and an EH are		

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	substantially the same, except that the taxpayer generally has no right to judicial review with an EH. Mailing an additional publication with EH Q/A's in such instances would be redundant, costly, confusing, and unnecessary.		
4. If a taxpayer reaches an agreement with Collection, do not ask the taxpayer to waive the right to a CDP hearing. Require Appeals to retain jurisdiction of the hearing when a taxpayer reaches an agreement with Collection, meaning Appeals and not Collection enters into the agreement with the taxpayer and conducts the other tasks required in CDP hearings.	When the taxpayer reaches an agreement with Collection, Collection advises the taxpayer of the option to voluntarily withdraw the CDP hearing request and explains the effect of the withdrawal. Denying taxpayers the right to withdraw a CDP hearing request after they have successfully resolved their tax matters with Compliance would harm taxpayers for several reasons, including: 1) causing confusion; 2) causing taxpayers to unnecessarily incur higher penalty and interest charges by delaying implementation of an agreed upon collection alternative; and 3) causing represented	No	The IRS's response regarding asking taxpayers to withdraw CDP requests when they have come to an agreement with Collection misses the point of our recommendation. The response states that Collection "advises the taxpayer of the option to voluntarily withdraw," while the IRM says the Revenue Officer "should solicit a withdrawal of the hearing request." Even if the IRS in practice only informs the taxpayer of the right to withdraw, withdrawing the CDP request takes away the responsibility of Appeals to ensure transparency and accountability in the collection process. The IRS response expresses a concern about

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	taxpayers to pay additional fees to meet with Appeals when the highly-probable result would be the same resolution. Implementing this recommendation would prioritize preserving appeal and judicial review rights over allowing taxpayers to resolve their tax matters at the earliest stage possible and at the lowest cost of time and money.		resources, but the Appeals review to determine whether Collection followed the applicable law and procedures could be done quickly and efficiently, so it would not add significant cost or time for the taxpayer. Appeals could be simultaneously working on the review to determine whether Collection followed procedures and at the same time be ready for the referral back from Collection. Appeals would act as a "quality review" of the decision.
5. Require Appeals to suspend a CDP hearing when a taxpayer raises a liability issue for a non-CDP year that would be included in collection alternatives covered by the CDP hearing. Allow the taxpayer to resolve these related liability issues with the appropriate IRS function.	CDP was created to allow taxpayers an opportunity for a timely appeal of certain collection actions. The statutory rights and requirements apply to the taxable period for which the collection action relates. Currently, the statute does not contemplate that collection actions for the years covered by the CDP will be suspended while issues related to liabilities for other tax years are resolved. Such a system would be	No	It is inefficient for the IRS and can be harmful to the taxpayer for the IRS to make a determination in a CDP case without first clearing up the underlying liability. This can lead to actions to collect an underlying liability that should not be there in the first place.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	impractical to implement as the underlying liability should be determined by Compliance not by Appeals and issues exists in attempting to keep an action suspended in Appeals for a potentially significant time. Other avenues exist for a taxpayer to dispute a liability with Compliance (e.g., amended return, audit reconsideration, claim, etc.).		
6. Provide further guidance and examples of when the issuance of an Appeals Referral Investigation is appropriate, and limit the use of ARIs to obtaining additional documentation or facts, not analysis.	Appeals has been working on ARI guidance relative to new AJAC requirements for several months. An interim guidance memo containing substantial ARI guidance was issued for clearance on March 4, 2014. Appeals anticipates release of this guidance soon.	Yes	The National Taxpayer Advocate is pleased that Appeals has been working on further guidance clarifying when employees should issue an Appeals Referral Investigation.
7. Update the Appeals IRM to provide significant guidance on CDP hearings, including reviewing the collection action, conducting the balancing test, and considering collection alternatives.	IRM Part 8 includes significant guidance on CDP hearings and includes the issues mentioned. IRM Part 8 has eight sections and 300 pages of guidance for Appeals employees considering CDP appeals. Over 100 of those pages are dedicated to verifying that the requirements	Yes	Appeals does not have sufficient IRM guidance in Part 8 on CDP and relies too heavily on Part 5 of the IRM. The IRS needs to provide specific guidance on conducting the balancing test, which is fundamental to a CDP hearing. The IRM should also be

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	of law and administrative procedures were met, considering collection alternatives, and determining whether the proposed collection action balances the need for the efficient collection of taxes with the legitimate concern that the collection action be no more intrusive than necessary. This recommendation is premised on the view that CDP does not provide taxpayers with a meaningful hearing. Tax Court decisions indicate the opposite is true. Page 376 in the Most Litigated Issues section of the NTA's 2013 ARC shows IRS fully prevailed in over 90% of the CDP decisions from 2003-2013, which strongly indicates taxpayers are receiving meaningful hearings.		updated to include a section on the hazards of litigation in the CDP context. Where there is judicial review and the Court has issued opinions and rulings on non-liability issues, there are hazards of litigation that the IRS should consider when deciding whether to settle a taxpayer's case.
8. Require all Appeals Officers, Settlement Officers, and Appeals Account Resolution Specialists to take updated training on conducting the balancing	Appeals has offered ongoing and comprehensive training on all aspects of CDP since IRC sections 6320 and IRC 6330 became effective. This includes training on verifying that the requirements of law and	No	The IRS has not agreed to update its training to provide more thorough guidance on conducting the balancing test. The National Taxpayer Advocate is disturbed by the IRS's refusal to take into

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
test and applying the hazards of litigation.	administrative procedures were met, considering collection alternatives, and determining whether the proposed collection action balances the need for the efficient collection of taxes with the legitimate concern that the collection action be no more intrusive than necessary. Assessing hazards of litigation applies to a small percentage of cases. The Conference Committee Report states that the court's de novo review applies only when the validity of the liability is properly at issue, and an abuse of discretion standard is applied in all other instances. Appeals officers who are well trained in assessing litigating hazards consider liability disputes in CDP cases. Non-liability issues raised under CDP require factual rather than legal determinations, in which case hazards of litigation do not apply.		account the hazards of litigation in non-liability cases. Where there is judicial review and the Court has issued opinions and rulings on non-liability issues, there are hazards of litigation that the IRS should consider when deciding whether to settle a taxpayer's case.

2013 ARC – MSP Topic #15 – EXEMPT ORGANIZATIONS: The IRS Continues to Struggle with Revocation Processes and Erroneous Revocations of Exempt Status

Problem

The IRS Exempt Organizations (EO) function receives about 60,000 applications for exempt status each year. In addition, EO receives applications for reinstatement from organizations whose exempt status was automatically revoked for failing to file returns or Form 990-N, Electronic Notice (e-Postcard) for Tax- Exempt EOs Not Required to File Form 990 or 990-EZ, for three consecutive years. Its inventory backlog now stands at about 66,000 cases, more than the number of routine applications it usually receives in an entire year, four times the 2010 level, and more than triple the 2011 level. EO also erroneously treated thousands of organizations as no longer exempt, and programming conditions will cause more erroneous revocations in the future. Organizations affected by delays in obtaining recognition of exempt status include those that deliver human services such as food and shelter. Of public charities that report to the IRS, there are more in this category than in any other. Increased need for their assistance coincides with reductions in the amount of government funds to meet the need, especially at the state and local levels.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Issue a letter informing the organization when the IRS proposes to treat it as having had its exempt status automatically revoked and providing an opportunity to correct the condition that caused the proposed automatic revocation within 30 days. The letter should specify the availability of administrative review for organizations raising	"As noted in the Report, the IRS sends Notice 259A ("You didn't file a Form 990/990-EZ or Form 990-N") each year an organization fails to file. In addition to informing an organization that it has not filed, the Notice 259A also advises the organization about the consequences of failing to file for three consecutive years. Approximately 8 percent of Notices 259A are returned by the Postal Service as undeliverable, an indication that	No	The National Taxpayer Advocate is disappointed in the IRS's position with respect to administrative review. Even if exempt status is automatically revoked by operation of law when an organization fails to file returns for three consecutive years, administrative review is not prohibited by statute. Nothing requires the IRS to immediately remove an organization it believes is no longer exempt from the list of organizations to

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
concerns that the IRS is proceeding in error.	the organization may not have updated its address. After multiple Notices, the effectiveness of yet another letter thirty days before automatic revocation would be unclear. The statute does not provide for administrative review of automatic revocation. Once an organization has failed to file the third required return, it is revoked by operation of law. In addition to its existing efforts, the IRS will consider further steps to advise organizations of their filing obligation, particularly by reviewing the content of Notice 259A and Notice CP 575E ("We assigned you an Employer Identification Number"), which is generally received at inception, and revising them as appropriate."		which deductible contributions may be made – a measure which may be fatal to the organization. The IRS already adjusts its records, and the list the public relies on, after it erroneously lists organizations as no longer exempt, a procedure that takes time and can be prolonged lack of funding for a valid exempt organization. Effective tax administration would allow organizations to show the IRS is in error beforehand, and would minimize damage and rework. Moreover, the IRS's position on this issue is inconsistent with its adoption, on June 9, 2014, of the Taxpayer Bill of Rights, which includes the right to appeal IRS decisions in an independent forum (such as the Appeals office or the Taxpayer Advocate Service).

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
2. When notifying organizations that they did not submit a required return or e-Postcard, inform them that EO calculates the three-year nonfiling period using the date the organization obtained its EIN. Advise them to contact EO if its use of the EIN date may result in an erroneous revocation.	The Report describes the considerations of accuracy and convenience underlying the business decision to compute the three-year period from the date of assignment of an EIN. The IRS agrees that a revision to Notice 259A would clarify the use of this date. Moreover, the EO function will consider a programming change to allow manual input of an alternate establishment date if the organization presents evidence of that alternate date in the course of an application for exemption (or reinstatement).	Yes	
3. Do not include in the three-year nonfiling period for purposes of automatic revocations any period for which an organization could not submit an e-Postcard without contacting the IRS.	The Report relates how the statutory requirement of electronic filing by small exempt organizations has created a gap for those not legally required to notify the IRS of their claim of tax-exempt status. At the current time, the IRS system cannot accept an e-filing from an organization which has not given prior notice of its existence and filing requirement. The IRS has	Yes	

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	addressed this issue by enabling e-filing by an organization once it makes a toll-free call as noted in the Report. Because the organization has to call the IRS before it can e-file, the recommendation to toll the three-year period until the organization calls would result in organizations not complying with their statutory filing requirement without any consequence. Nevertheless, the current cumbersome effect on both organizations and the IRS would justify exploration of programming changes to facilitate e-filing in this case. As anticipated, the IRS will allow e-filing by an organization that indicated, when obtaining an EIN, that it was a non-profit.		

2013 ARC – MSP Topic #16 – REVENUE PROTECTION: Ongoing Problems with IRS Refund Fraud Programs Harm Taxpayers by Delaying Valid Refunds

Problem

The National Taxpayer Advocate identified problems as early as 2005 with IRS return integrity programs, which detect and prevent civil fraud in tax returns before the IRS issues refunds to the taxpayers. Despite improvements, problems within the IRS's return integrity strategies persist and continue to harm taxpayers. The continued failure to address these problems burdens taxpayers who file legitimate returns and are wrongly ensnared by the myriad of fraud detection filters put in place by several IRS units. The failure of these units to coordinate may result in duplicate, over-inclusive, and unnecessary filters that are not routinely reviewed for accuracy or continued necessity. With the elimination of the IRS's return integrity steering committee, problems associated with fraud detection filters will not be discussed at a servicewide level and may create additional burden.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Reinstate the Pre-refund Executive Steering Committee or form a new, similar committee with TAS as a charter voting member.	The FY 2013 Return Integrity and Correspondence Services (RICS) reorganization established a centralized structure for the refund fraud program, and eliminated the need for an Executive Steering Committee (ESC). RICS has made it a priority to continue regular and frequent collaboration and coordination with all impacted functions, including PGLD, CI, TAS, and SB/SE.	No	While the National Taxpayer Advocate agrees that RICS has kept open lines of communication with TAS and presumably the other operating divisions (ODs) and functions, the IRS seems to have missed the point of the recommendation to reinstate the Executive Steering Committee. Individual communication with the ODs and functions is of course important; however, it is not a substitute for an overarching body composed of all impacted ODs and functions. Without an

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
			executive committee, the individual ODs and functions may never realize that their efforts are duplicative, have gaps, or are contradictory. The National Taxpayer Advocate strongly urges the IRS to reconsider and reinstate the Executive Steering Committee.
2. Perform regular global reviews and updates of all return integrity filters.	The IRS strives to identify fraudulent refunds while minimizing the delay of refunds due to legitimate taxpayers. A robust fraud detection program unfortunately means that some taxpayers' returns will be subjected to additional scrutiny and refunds delayed. Data driven models are used to identify fraudulent claims for refund, including fraud caused by identity theft. These models are continuously monitored for improvement. The Cross Industry Standard Process for Data Mining is applied when creating the Models. For 2014 we have implemented the use of Historical Characteristics Exclusionary rules to further	Yes	

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	increase the accuracy of the selections.		
3. Introduce a computer code to indicate that a refund is under investigation through the bank leads program.	The IRS has existing codes in place that identify if a refund is under review through the bank leads program. IRS employees open IDRS control bases to identify ongoing action on the account under review. If a taxpayer contacts the IRS about a refund, a Customer Service Representative (CSR) is able to identify that the case is being reviewed based on a bank lead. Once the review is complete, the refund is either released to the taxpayer or the account is referred to the appropriate civil treatment stream. If referred, the bank lead portion of the review is over and normal revenue protection procedures begin. In addition, some financial institutions participate in a program to reject direct deposit refunds for specific account discrepancy reasons. Direct deposit refunds that are	Yes	

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	rejected by the financial institution are rejected using codes R17, R18, or R19 to send to RICS for a review identical to the review conducted above. When the refund posts back to the taxpayer's account, the taxpayer is issued a CP53A, CP53B, or CP53C according to the reject code R17, R18, or R19 respectively The CP53 informs the taxpayer that their refund was rejected by the financial institution and is under review and they do not need to take action until the review is completed. Once the review is complete, the refund is either released to the taxpayer or the account is referred to the appropriate civil treatment stream. If referred, the bank lead portion of the review is over and normal revenue protection procedures begin.		
4. Reclassify the letters intended to inform taxpayers of the status of	The IRS is discovering that returns identified by refund fraud programs are due to	No	The National Taxpayer Advocate remains concerned about mail returned to the IRS

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
a refund caught by filters from "just destroy" to "perform further research" when they are returned as undeliverable.	identity theft. Notices sent to addresses on these returns have historically low response rates because in most cases the true taxpayer did not file the return. As a result, a process that requires further research would not be appropriate.		as undeliverable and its impact on taxpayer rights. It is notable that the IRS has found that many returns stopped by revenue protection strategies are the result of identity theft. If this is the case, what is the IRS doing to notify the actual taxpayer that his Social Security number may have been compromised? Further research would allow the IRS to identify correct taxpayer addresses on returns with a simple typographical error in the address, or to identify a real address for a taxpayer who may be a victim of identity theft. By not conducting additional research, the IRS is assuming that all undelivered mail is a result of ID theft and harms taxpayers who may have made a simple error, those who have moved and not updated the IRS, and those who may be actual victims of identity theft and be unaware that a problem might exist.

2013 ARC – MSP Topic #17 – ACCURACY RELATED PENALTIES: The IRS Assessed Penalties Improperly, Refused to Abate Them, and Continues to Assess Them Automatically, Violating Taxpayer Rights and Reducing Respect for the Law

Problem

In 2012, in a reversal of prior advice, the IRS Office of Chief Counsel determined that the IRS was not legally authorized to impose the accuracy-related penalty under IRC § 6662 against taxpayers who claimed refundable credits that it had frozen (i.e., not actually paid or accepted). The IRS abated almost $143 million in penalties that it imposed against 108,774 taxpayers after June 1, 2012. Yet it declined to abate more than $40 million in penalties that it imposed improperly against more than 46,000 taxpayers earlier, and it is still trying to collect over $20 million of these penalties from more than 23,000 taxpayers. The IRS's failure to abate inapplicable penalties signals disrespect for the law and a disregard for taxpayer rights.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Identify and abate (or refund) all accuracy-related penalties on frozen refundable credit claims for all open years.	In the second quarter of FY14, Commissioners of W&I and SBSE approved penalty abatements on frozen refund cases closed after November 20, 2009, the date the Office of Chief Counsel issued an opinion on this subject. The affected cases for the two and a half years are being analyzed to insure abatement is appropriate and abatements have commenced on those confirmed.	Yes	The National Taxpayer Advocate is pleased the IRS has now agreed to abate penalties that it improperly assessed. She is also pleased that the IRS worked with the Treasury Department in 2008 and 2011 to propose a reasonable cause exception to the penalty under IRC § 6676. The IRS should continue its advocacy in this area. A reasonable cause exception to this penalty is particularly important, given the possibility that the IRS will begin to impose it against those claiming

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
			the child tax credit (CTC).
2. If a court determines that accuracy-related penalties do not apply to refundable credit claims that the IRS has paid, and the IRS does not appeal, then identify and abate (or refund) all such penalties on open years.	As per our normal processes, the IRS carefully considers court decisions and takes appropriate administrative actions as warranted.	N/A	The IRS may address the recommendation if such a decision is rendered and the IRS does not appeal.
3. In the meantime, the IRS should direct attorneys handling refundable credit cases involving IRC § 6662 penalties to notify the court and opposing counsel (or pro se petitioner) if the IRS is pursuing a larger penalty than would apply under the Tax Court's recent analysis in Rand.	Ethical rules applicable to practice in the Tax Court already make clear a lawyer's duty to advise the court of adverse authority; therefore, there is no need to specifically direct attorneys as per the recommendation. The issue decided in Rand v. Commissioner, 141 T.C. No. 12 (2013), is being raised appropriately by the Office of Chief Counsel attorneys during the pendency of docketed Tax Court cases.	No	The National Taxpayer Advocate is pleased that the IRS has addressed TAS's recommendation to direct its attorneys to notify the court and opposing counsel if the IRS is pursuing a larger penalty than would apply under Rand. On July 31, 2014 it issued Notice CC-2014-007, which directed that "Counsel attorneys handling docketed Tax Court cases should ensure that any accuracy-related penalty or fraud penalty involving disallowed refundable credits is calculated in accordance with the Tax Court's decision in Rand."
4. Avoid proposing the new	In a TIGTA audit report, #2013-	No	The IRS's plans to

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
penalty under IRC § 6676 automatically (i.e., before contacting the taxpayer, considering the facts, and determining that it actually applies).	40-123 (The Law Which Penalizes Erroneous Refund and Credit Claims Was Not Properly Implemented), TIGTA pointed out that if the erroneous refund penalty is not assessed when applicable, there is nothing to deter taxpayers from repeatedly filing excessive erroneous credit claims. As a result, individuals will continue to make questionable claims on their tax returns, burdening IRS resources and increasing the cost of addressing taxpayers' noncompliance. These are the individuals that the law was intended to penalize. As a result of TIGTA's recommendation, the IRS has already established a cross functional team to assess the feasibility and cost of assessing the IRC § 6676 penalty in the campus environment. The assessment process will be determined based on this team's analysis and findings. In addition, the IRS will consider performing a penalty study to		automatically assert the new penalty under IRC § 6676 for potentially erroneous refund requests will subject more taxpayers who have legitimate claims to unnecessary burdens. Moreover, it will squander IRS resources when they contact the IRS concerning penalties that do not apply, and disregards direction from Congress to "make a correct substantive decision in the first instance rather than mechanically assert penalties with the idea that they will be corrected later." H.R. Rep. No. 101-386, at 661 (1989) (Conf. Rep.). Other penalties, such as the penalty for frivolous submissions, sufficiently address the IRS's concerns about the extent to which its resources are drained by frivolous submissions. The National Taxpayer Advocate is pleased that the IRS may undertake a study to determine the actual effect of the IRC 6676 penalty. This

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	determine if penalties are counter-productive.		study should address the extent to which it discourages legitimate claims or drains IRS resources in dealing with abatement requests.
5. Work with the Treasury Department to seek an amendment to IRC § 6676 to provide a reasonable cause exception, as previously recommended by the National Taxpayer Advocate.	In March 2008 and again in 2011, the Office of Associate Chief Counsel (Procedure & Administration) recommended that Treasury seek legislation to include a reasonable cause exception to the section 6676 penalty.	Yes (Partial)	The National Taxpayer Advocate is pleased that the IRS worked with the Treasury Department in 2008 and 2011 to propose a reasonable cause exception to the penalty under IRC § 6676. The IRS should continue its advocacy in this area. A reasonable cause exception to this penalty is particularly important, given the possibility that the IRS will begin to impose it against those claiming the child tax credit (CTC).

2013 ARC – MSP Topic #18 – ONLINE SERVICES: The IRS's Sudden Discontinuance of the Disclosure Authorization and Electronic Account Resolution Applications Left Practitioners Without Adequate Alternatives

Problem

The IRS has a strategic goal of expanding electronic service options for its tax partners, including practitioners, who can interact with the IRS through an e-Services suite of web-based products. In early 2013, the IRS discontinued the Disclosure Authorization (DA) and Electronic Account Resolution (EAR) applications without discussing the matter with the practitioner community in advance. DA enabled practitioners to submit power of attorney and tax information authorization forms (Forms 2848 and 8821) electronically, while EAR allowed practitioners to work with the IRS electronically on account- related issues. The IRS cited low usage and increased operating costs as reasons for ending the programs. However, almost immediately after the IRS announced the decision, practitioners expressed significant concerns. The National Taxpayer Advocate believes the decision process lacked strategic planning and stakeholder engagement, and increased burden on taxpayers and their representatives.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Consult with and solicit comments from impacted stakeholders, i.e., the practitioner community, before deciding whether to retire applications.	OLS routinely solicits comments from the Business Operating Divisions, Information Technology, and impacted stakeholders in the process of deciding applications to be retired.	Yes (Partial)	The National Taxpayer Advocate appreciates the commitment of OLS to solicit comments from both internal and external stakeholders before retiring applications. However, in this particular case, the IRS discontinued the Disclosure Authorization and Electronic Account Resolution applications without discussing the matter with the practitioner community in advance. Furthermore, the National Taxpayer Advocate, an internal stakeholder, was not informed

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			beforehand. In fact, she learned about it after-the-fact from the practitioner community. In the future, the National Taxpayer Advocate requests that OLS solicit comments from her as well as other impacted internal and external stakeholders before making any final decisions. Soliciting comments after a final decision has been made is mere not conducive to trust or ongoing dialogue.
2. Establish a strategic plan to identify develop, and promote viable electronic alternatives to discontinued applications prior to discontinuance.	The IRS Strategic Plan depends on sufficient resources to implement. We often identify strategies and initiatives that are a priority but for which we lack funding. OLS routinely works with the Business Operating Divisions and Information Technology to include viable electronic alternatives to discontinued applications prior to their discontinuance where appropriate.	No	The Taxpayer Advocate Service is cognizant of the funding and resource issues. However, the IRS must develop a strategic plan and implement this plan in order to identify those applications in need of additional funding. The Taxpayer Advocate Service will assist in raising awareness of these issues in the annual report.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
3. For online practitioner applications experiencing low usage, solicit comments from the users on how to improve the applications to boost usage to acceptable levels.	OLS routinely solicits comments from the Business Operating Divisions, Information Technology, and users of low-usage practitioner applications to boost uses as a collaborative effort.	Yes (Partial)	The National Taxpayer Advocate appreciates the commitment of OLS to solicit comments from both internal and external stakeholders on how to boost usage. However, in this particular case, the IRS discontinued the Disclosure Authorization and Electronic Account Resolution applications without seeking advice from internal and external stakeholders on how to boost usage. In the future, the National Taxpayer Advocate requests that OLS solicit comments from her as well as other impacted internal and external stakeholders before making any final decisions.
4. Solicit suggestions from practitioners on marketing strategies and potentially develop a joint marketing initiative, leveraging stakeholders' ability to communicate with their members.	OLS routinely solicits comments and suggestions from the Business Operating Divisions, Information Technology, and the practitioners on marketing strategies as a collaborative effort.	Yes	The National Taxpayer Advocate appreciates the commitment of OLS to solicit comments from both internal and external stakeholders before retiring applications. However, in this particular case, the IRS discontinued the Disclosure Authorization and Electronic Account Resolution

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
			applications without discussing the matter with the practitioner community in advance. Furthermore, the National Taxpayer Advocate, an internal stakeholder, was not informed beforehand. In fact, she learned about it after-the-fact from the practitioner community. In the future, the National Taxpayer Advocate requests that OLS solicit comments from her as well as other impacted internal and external stakeholders before making any final decisions. Soliciting comments after a final decision has been made is not conducive to trust or ongoing dialogue.
5. Evaluate potential electronic alternatives to the retired e-services applications.	Previous electronic services for tax professionals were discontinued due to resource constraints. The IRS agrees with the recommendation and will work with the Business Operating Divisions and Information Technology to evaluate potential electronic alternatives to retired e-services applications.	Yes	TAS looks forward to working with OLS to evaluate potential alternatives to the retired applications.

2013 ARC – MSP Topic #19 – IRS WORKER CLASSIFICATION PROGRAM: Current Procedures Cause Delays and Hardships for Businesses and Workers by Failing to Provide Determinations Timely and Not Affording Independent Review of Adverse Decisions

Problem
The classification of workers as employees or independent contractors has significant tax consequences for businesses and individuals, ranging from the allowance of expenses derived from a "trade or business" to eligibility for employee benefit or pension plans. The National Taxpayer Advocate has repeatedly called for the IRS to simplify its worker classification criteria and develop online self-help tools, but the IRS has taken little action. In addition, applicants who receive adverse classification determinations from the IRS may not automatically receive administrative appeal options, and those who do may not be afforded all the remedies offered in internal guidelines.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Adopt the National Taxpayer Advocate's previous recommendation to develop an electronic self-help tool for employers or workers to determine employment status	Multiple factors must be considered when making a determination of a workers status as employee or independent contractor. The determination depends on the unique facts and circumstances of each case, some factors will carry more weight than others depending upon the situation. Because worker relationships are unique and fact intensive, creation of an automated program would carry risk that some factors are not considered or are not given proper weight. Also, Section 530 prohibits the IRS from issuing guidance.	No	The National Taxpayer Advocate continues to believe that both taxpayers and the IRS would benefit from an electronic self-help tool to determine employment status. The National Taxpayer Advocate will consult the Office of Chief Counsel. We encourage the IRS to seek opinion from Counsel about whether the development of such a tool would violate Section 530. If Counsel opines that it would not, we encourage the IRS to seek advice from HMRC on how its system balances the many factors that go into similar

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	Making an automated program that standardizes certain factors may be in conflict with this provision of Section 530. Further, an automated program might create 530 relief with regard to the results provided by the program to taxpayers who use it, even if such taxpayers manipulate or use the program improperly; and the IRS would likely have a very hard time demonstrating that such taxpayers manipulated or used the program improperly. In addition, notwithstanding the aforementioned concerns, budget constraints and lack of Information Technology resources prevent us from considering this as an option. The Treasury Department has included a proposal in the Greenbook to issue generally applicable guidance on the proper classification of workers under common law standards, and the IRS agrees some guidance for taxpayers would be helpful.		determinations in the United Kingdom.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
2. Allow applicants the right to an independent administrative appeals review of adverse determinations by the SS-8 unit.	This issue was discussed extensively with TAS and the Office of Chief Counsel. Current procedures were shared with TAS with the understanding we would work on the process further. Currently, if the requestor contacts the SS-8 program and voices disagreement with the adverse determination, the requestor shall be advised of the reconsideration procedures, and also require the requestor to provide information not previously considered. Form 14430 and a letter explaining the reconsideration are sent to the requestor. To improve this process, a notice is being written that will provide specific information on how to request a reconsideration along with the documentation that is needed and will be published. This notice will be included in with the determination letter. Procedures currently in IRM 7.50.1.5.10 will be rewritten to say that the reconsideration is	Yes	The IRS has indicated that it will begin discussions with Appeals to determine the feasibility of their providing a review of adverse determinations. Because an incorrect IRS decision has significant consequences for income and employment tax liabilities, providing applicants with the right to an independent, administrative appeals review of adverse determinations would improve the process significantly.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	to be worked by an independent reviewer. The rewrite of the IRM will be shared with TAS when Counsel has approved the new process and the actions are complete.		
3. Increase staffing to address the existing backlog and prevent future accumulation of worker classification requests.	IRS conducted an analysis of receipt patterns and verified that we have appropriate staffing to handle workload. Prior to 2012, all documents were accepted into the program (e.g. Form 1099 reporting issues). A first read screening process identifies cases that are not worker classification issues and refers the taxpayer to the toll-free assistance line for resolution of their non-worker classification issues.	Yes (Partial)	The first read screening process is an effective tool to weed out non-worker classification issues. However, it also identifies and rejects incomplete applications rather than simply picking up the phone and calling the taxpayer to request additional information. A simple phone call at the beginning of the process could move a case forward with little burden to either party.
4. Provide applicants an opportunity to cure perceived deficiencies in their initial filings rather than rejecting the applications outright through an initial screening process.	Workers or firms submitting an SS-8 for worker classification issues have the opportunity to cure the request. The incomplete document is returned with Letter 4949 explaining the defects. If returned and the document is still not perfected, then an examiner calls to obtain the	Yes (Partial)	While the IRS states that workers and firms have the ability to cure requests, we remain concerned that the procedures impose unnecessary burden. The IRS first returns the incomplete document back with a Letter 4949 explaining the deficiencies. Upon return, if the

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	missing information. This guidance is provided in IRM 7.50.1.3.1 and contact procedures are in 7.50.1.3.1(8).		document is still not perfected, the IRS states that it calls the requester. However, nothing in the IRM states that the IRS must call. IRM 7.50.1.3.1(8) merely says the IRS will "contact" the requester, which can mean a variety of methods and not necessarily a phone call. The National Taxpayer Advocate recommends the IRS revise the IRM to specifically state that the contact must be by phone. The IRM should direct the IRS employee to attempt to contact the requester by telephone before sending the document back the first time. The use of the telephone upfront could significantly reduce response time.

2013 ARC – MSP Topic #20 – INTERNATIONAL TAXPAYER SERVICE: The IRS Is Taking Important Steps to Improve International Taxpayer Service Initiatives, But Sustained Effort Will Be Required to Maintain Recent Gains

Problem

U.S. citizens or resident aliens are subject to tax on their worldwide incomes and have the same general tax reporting requirements whether they live in the United States or abroad. However, the tax requirements have become so confusing and the compliance burden so great that taxpayers are giving up their U.S. citizenship in record numbers. The IRS emphasizes service to international taxpayers via IRS.gov webpages, but taxpayers still call the IRS for assistance with account-related matters because online options remain limited. The IRS is planning improvements to online service delivery, but in view of the unique communication challenges international taxpayers encounter, the IRS needs to prioritize initiatives that affect this population.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Make the IITA a permanent initiative with reporting responsibilities.	The IRS continues to recognize the importance of a team focused on international taxpayers and welcomes the opportunity to continue working with the NTA. In June 2012, a cross-functional International Individual Taxpayer Assistance Team (IITA) was formed to better coordinate and develop international taxpayer service initiatives. This team consists of LB&I, W&I, ACCI, TAS, and Online Services. In June 2013, a permanent IITA manager was selected to coordinate this collaborative effort. The IRS	No	The National Taxpayer Advocate congratulates the IRS on the new IRS.gov pages directed at international taxpayers, which are tailored to specific audiences and are easier to navigate. The release of the FATCA FFI look-up tool is also a welcome development. The National Taxpayer Advocate is pleased that the IRS continues to collaborate with TAS in providing better service to international taxpayers - its willingness to explore alternative telephone services that do not carry international call rates is one

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	recognizes the need and importance of enhancing taxpayer service to international taxpayers operating in a complex global tax environment. Enhancements to the international taxpayer webpage and tax map have been made to improve the international taxpayer experience. The current IITA is still in the pilot stage, and its' effectiveness will need to continue to be evaluated and measured. After the completion of this evaluation, the IRS will consider whether the IITA should become permanent with a formal charter.		example. Thus, we are surprised and disappointed in the IRS's unwillingness to make the IITA permanent. The IITA, formed in 2012, now has a track record to evaluate. The population of international taxpayers is growing, and the IRS should signal its commitment to meeting the needs of this important taxpayer base. Making IITA permanent, with a charter and a strategic plan, would also signal that the IRS is not concerned only with enforcement initiatives with respect to international taxpayers.
2. Develop and implement free electronic filing of Forms 1040NR and W-7.	The IRS is committed to balancing the needs of customers, complying with statutory regulations and protecting taxpayers from potential fraud and ID theft. As such, the IRS does not plan to pursue electronic filing of the ITIN application. Form W-7, Application for IRS Individual Taxpayer Identification Number	Yes (Partial)	The National Taxpayer Advocate welcomes the availability of electronic filing for Form 1040-NR in 2016, even though it will not be free initially. Once it is included in Free File, it needs to be in the Free Fillable Forms portion of Free File so that international taxpayers who do not meet Free File income requirements will have access to it. The National

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	(ITIN), is not a candidate form for electronic filing for the following reasons: 1. Modernized e-File (MeF) is unable to accept both the W-7 and associated tax return(s) in the same transaction. Taxpayers are required to include their original, valid tax return(s) for which the ITIN is needed. 2. MeF requires a valid Taxpayer Identification Number (TIN) at the time the return is submitted for processing. The tax returns submitted with the W-7 applications do not have a TIN when the return is submitted to IRS. 3. Taxpayers must also submit documentation that supports the information provided on the Form W-7. The applicant can submit original documents or certified copies from the issuing agency. Attaching a pdf version of the supporting documentation will not allow IRS to authenticate the documents per IRM 3.21.263.		Taxpayer Advocate is disappointed that the IRS, by not allowing electronic filing of Form W-7, relies on circular reasoning. Taxpayers are required to submit Form W-7, the application for an ITIN, with their returns, but the IRS cannot accept an electronically filed return that does not already have an ITIN – which means it also cannot accept electronic Forms W-7. The IRS could eliminate this problem by allowing taxpayers to file Form W-7 before the filing season and by building a separate application to accept electronic Forms W-7, which would accommodate documentation. As we have discussed elsewhere, the IRS could also change its rules that require taxpayers to submit original documents.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	Form 1040-NR is included in the list of forms to be sequenced and has been identified as a Business Operating Division (BOD) priority form. Form 1040-NR is tentatively planned for Processing Year (PY) 2016 deployment. Our ability to deliver in this time frame is dependent on budget and resource availability and considered in the context of other agency priorities. There are currently no plans for the IRS to develop and offer a free version of the 1040-NR. The IRS will engage the Free File Incorporated to consider offering a free version once the form is deployed on the MeF platform."		
3. Prioritize the delivery of online services to the overseas population of international taxpayers, given their special circumstances and communication barriers, by including them in the	As part of the IRS's online service delivery strategy, the IRS will consider options for international taxpayers. The IRS already includes the overseas population of taxpayers in online service projects, whenever possible.	No	The limited amount of resources is what makes prioritizing necessary, and the National Taxpayer Advocate regrets that the IRS is unwilling to generally prioritize the online service needs of international taxpayers. However, she appreciates the

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first group of pilot projects the IRS launches.	Resources are not available to prioritize online services to the overseas population. Other guidance and recommendations concerning online services require that the delivery of online services to the entire taxpayer population needs to be prioritized, with resources directed toward addressing other online challenges. The IRS is updating the irs.gov landing page for international taxpayers to improve the taxpayer's web experience. The IRS has an online tool scheduled for release in May 2014 – the FATCA FFI look-up tool. The IRS will continue to investigate and prioritize services as resources become available. The IRS welcomes the opportunity to work with TAS to determine what specific pilots TAS is interested in and the order of priorities.		IRS's willingness to work with TAS in identifying particular priority areas for online services. Electronic 1040-NR is an example where this was successful.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
4. Improve the CSR level of service for international taxpayers who call the international call site.	We are committed to providing the best level of service possible to the international taxpayer segment within the over-arching need to balance the use of our declining resources to best meet the service needs of all taxpayers. As noted in the MSP, the level of service provided to international taxpayers for FY 2012 was 72%. The same level of service (72%) was provided in FY 2013. The level of service provided to international taxpayers is higher than what the IRS provides to non-international taxpayers. Maintaining the level of service was significant in light of recent budget constraints that have caused the IRS to make difficult decisions concerning services provided."	No	The National Taxpayer Advocate applauds the IRS for maintaining its level of service from FY 2012 to FY 2013. However, the level of service is still low, and the IRS should strive to improve it.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
5. Explore the use of voice-over-Internet-protocol and other alternative methods of telephone services that will allow the IRS to contact taxpayers, and taxpayers to contact the IRS, without paying international call rates.	The IRS has looked at this issue in the past. Each service requires subscriber-to-subscriber connection. The IRS is not a subscriber and cannot endorse the use of one service over another without a competitive procurement action. We also do not know if it would be possible to queue such callers, as connection to the Public Switched Telephone Network is required for queuing. As part of the IRS's online service delivery strategy, this is an area that will be explored.	Yes	
6. Open more foreign tax attaché offices, and locate a Local Taxpayer Advocate at each site.	The IRS does not believe that such expansion is appropriate at this time. We do not believe that the magnitude of the overseas service challenge can be adequately addressed by incurring the substantial costs of placing single individuals in overseas offices to answer the telephone or handle walk-in assistance requests. Especially given limited budgets, our efforts will be focused on delivery channels that will	No	We propose staffing new foreign attachés with Local Taxpayer Advocates (not general IRS employees) whose job would be threefold: 1. To ensure that the rights of taxpayers within that office's geographic area are protected; 2. To conduct outreach; and 3. To identify problems specific to that population. By proposing minimal staff, with the casework done in domestic

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	benefit taxpayers on a broader basis.		U.S. TAS offices, we have taken cost concerns into consideration.
7. Develop dedicated FAQs that ultimately become formal published guidance about how U.S. citizens abroad who are subject to the reporting requirements of the Affordable Care Act (ACA) can meet their obligations, and provide links to this guidance on the ACA webpage from the international taxpayer webpage.	ACA has primary responsibility for all issues relating to the ACA. LB&I will work with ACA to identify useful links to add to the international taxpayer webpage. The ACA pages currently include FAQs that focus on the international taxpayer.	Yes (Partial)	The National Taxpayer Advocate supports IRS efforts to provide information regarding the ACA on its website. Currently, taxpayers searching for information about how the ACA affects them are directed to a home page that is then branched out by taxpayer (e.g., Individuals and Families, Employer) or provision (e.g., Premium Tax Credit or Individual Shared Responsibility) with no further menu subcategories. A taxpayer living abroad is then left in the confusing situation of finding essential information piecemeal. An ACA page dedicated to overseas taxpayers would provide a single point of service to this growing group of taxpayers and alleviate their burden in researching this material.

2013 ARC – MSP Topic #21 – INDIVIDUAL TAXPAYER IDENTIFICATION NUMBERS (ITINS): Application Procedures Burden Taxpayers and Create a Barrier to Return Filing

Problem
In November 2012, the IRS announced permanent changes to its application procedures for Individual Taxpayer Identification Numbers (ITINs), which taxpayers who are ineligible for Social Security numbers must use to meet their filing obligations. Dependent ITIN applicants now face a substantial burden because they can no longer use a certifying acceptance agent (CAA) to certify their documents. Dependents must mail original documents or copies certified by the issuing agency, or have the documents certified at an IRS taxpayer assistance center (TAC) or at one of just four U.S. tax attaché offices overseas.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Allow filing of ITIN applications throughout the year if submitted with proof of taxable income or a filing requirement.	The requirement to file a valid tax return with the Form W-7 application was established to ensure the Individual Taxpayer Identification Number (ITIN) assigned is used for proper tax administration purposes. Associating the issuance of the ITIN with the filing of a tax return is the only reliable method for the IRS to verify the number is being requested and properly used for tax administration purposes.	No	The National Taxpayer Advocate is disappointed by the IRS's response regarding ITINs. The blanket statement that filing an ITIN application with a paper return is the only reliable method of verifying that an ITIN is being requested and used properly shows the IRS is unwilling to consider alternatives, even ones that it already uses. The IRS allows applicants to provide copies of pay stubs with year-to-date information to verify that the applicant earned income if a Form W-7 and Form W-2 do not match. The IRS is ignoring its own practice, which provides a

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
			clear example of an acceptable way for an applicant to prove a filing requirement without filing a return.
2. Allow ITIN applications to be filed electronically.	The IRS does not plan to pursue electronic filing of the ITIN application. The Form W-7, Application for IRS Individual Taxpayer Identification Number (ITIN), is not a suitable candidate for electronic filing for several reasons. In order to strengthen the ITIN program, when requesting an ITIN taxpayers are required to submit documentation that supports the information provided on the Form W-7. The applicant can submit original documents or certified copies from the issuing agency. The attachment of an electronic copy of the documents, such as a pdf version of the supporting documentation, will not allow IRS to authenticate the documents as outlined in IRM 3.21.263. In addition, taxpayers are required to submit their original tax return(s) for which	No	Regarding the IRS's statement that Form W-7 is not an applicant for electronic filing, it is the IRS's own rules, such as the requirement to submit Form W-7 with a return, that prevent the Modernized e-File system from being able to process a Form W-7 and the accompanying return in the same transaction. The IRS could eliminate this problem and the associated bottlenecks if it allowed taxpayers to apply for an ITIN throughout the year with proof of a taxable income or a filing requirement.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	the ITIN is needed with the W-7 attached. The Modernized e-File (MeF) system is not able to accept both the W-7 and associated tax return(s) in the same transaction. MeF also requires a valid Taxpayer Identification Number (TIN) at the time the return is submitted for processing. The tax returns submitted with the W-7 applications do not have a TIN when the return is submitted to IRS. The return is processed after the ITIN is assigned.		
3. Allow CAAs to certify copies of dependents' documentation instead of requiring original documents or copies certified by the issuing agency.	To protect the integrity of the ITIN program and refund process, it was determined that specifically trained IRS employees in Austin, TX, designated Taxpayer Assistance Centers (TACs) and tax attachés need to review the identification documents of dependents. The IRS trained employees to authenticate identification documents, including those for dependents, submitted with Form W-7 ITIN applications. The techniques	No	The IRS's continuing policy of not allowing CAAs to certify dependents' supporting documents will only continue to harm taxpayers who cannot give up their documents for extended periods or may not have access to a TAC. It is surprising that the IRS is touting the increased number of TACs that certify ITIN documents as a solution, given the recent decrease in overall service at TACs and the long lines caused by certifying ITINs. While the

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	and training materials used were provided by the Department of Homeland Security. The IRS trained employees from Submission Processing (SP) ITIN, located in Austin, Texas, Field Assistance TACs located throughout the United States, and United States Tax Attachés around the world. This training expanded service options to ITIN applicants and an alternative to surrendering original identification documents or mailing them to the SP ITIN Unit. In FY 2014, the IRS expanded this valuable service to assist more customers at 188 TACs compared to 100 TACs trained to authenticate ITIN documents in FY 2013.		National Taxpayer Advocate applauds the expansion of ITIN processing in TACs, TACs are simply not a substitute for CAAs.
4. Allow TAC employees to certify all identity documents (beyond passports and national identity cards) that ITIN examiners currently accept for primary, secondary, and	The IRS determined certain identity documents could be certified by a Taxpayer Assistance Center (TAC) based on historical data. TACs are limited to face-to-face authentication of documents with relatively little variance in	No	The IRS's continuing policy of not allowing CAAs to certify dependents' supporting documents will only continue to harm taxpayers who cannot give up their documents for extended periods or may not have access to a TAC. It is

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
dependent applicants.	format which have a lesser chance for alterations and potential fraud. Variance in format and content among alternate documents originating in foreign countries would prevent the TAC employees from becoming proficient in authentication without extensive training and specialized tools. The criteria for document certification, including documents that can be certified at a TAC are listed on IRS.gov.		surprising that the IRS is touting the increased number of TACs that certify ITIN documents as a solution, given the recent decrease in overall service at TACs and the long lines caused by certifying ITINs. While the National Taxpayer Advocate applauds the expansion of ITIN processing in TACs, TACs are simply not a substitute for CAAs.
5. Require training with a knowledge check or test on the ITIN real time system for employees answering the toll-free lines and update the IRM to advise toll-free assistors of the capability to transfer calls to the ITIN unit.	The IRS is committed to providing toll free assistors with the necessary skill sets to effectively address customer ITIN inquiries. We train employees who work Application 20/21 (individual account inquiries), Priority Practitioner Services, International Accounts and National Taxpayer Advocate applications. Employees take three ELMs courses that address Real-Time System (RTS) and ITIN Topics. Two courses include a knowledge	Yes (Partial)	The National Taxpayer Advocate is pleased that IRS toll-free assistors have full access to the Real-Time System, so there is no technical bar to their looking up ITIN information for taxpayers. However, because many taxpayers have reported that the assistors have not accessed RTS when they called, there is a concern that the assistors are not actually using RTS. If in practice employees do not use RTS and cannot answer basic questions

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	check (test). In addition, managers assess the sufficiency of RTS and ITIN training through regular evaluative managerial reviews of employee performance. The IRS toll free assistors have full access to RTS and can answer questions involving filing and dependent issues as well as post-filing questions and the current status of the application. This minimizes any need to transfer customers and create additional burden for them such as wait time. If there is an issue toll free assistors cannot resolve, the IRM instructs them to fax or refer (Form 4442) the issue to the ITIN unit on the customer's behalf. A call can be transferred from toll free product lines to a local line by selecting "outside line" on the teleset and dialing the local number. Upon receiving an answer, the assistor hits the transfer button. The problem with this procedure is it ties up two lines on the Automated Call		about a caller's ITIN application, it is apparent that the RTS training is inadequate. Furthermore, it is of little benefit to applicants if toll-free assistors can transfer calls to the ITIN unit, but do not know how because the IRM does not provide this information. The IRS has not agreed to update the IRM to inform assistors about the ability to transfer calls to the ITIN unit.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	Distributor, one inbound and one outbound. This transfer could also impair our service to other taxpayers as it will tie up an inbound line and an outbound line, which would limit the number of taxpayers that can reach an assistor. Therefore, we do not publish the transfer capability in the IRM for toll free assistors to transfer directly to the ITIN unit.		
6. Require notification to a taxpayer before an ITIN expires and allow the taxpayer time to apply for and obtain a new ITIN before the expiration of the old number.	The IRS is working on the approach for deactivation of ITINS. This approach incorporates feedback and comments, including from external stakeholders such as practitioners and community based organizations. The approach will incorporate feedback and comments from external stakeholders and will also address the feasibility and options for notification to the taxpayer.	Yes	The National Taxpayer Advocate hopes the IRS will seriously consider the importance of notifying taxpayers that their ITINs will expire before they do. Failure to notify taxpayers violates their right to be informed and will only lead to more work for the IRS in having to match already filed returns with new ITIN applications.

2013 ARC – MSP Topic #22 – OFFSHORE VOLUNTARY DISCLOSURE: The IRS Offshore Voluntary Disclosure Program Disproportionately Burdens Those Who Make Honest Mistakes

Problem

Since 2009, the IRS has generally required individuals who failed to report offshore income and file one or more related information returns (e.g., the Report of Foreign Bank and Financial Accounts (FBAR)) to enter into increasingly punitive offshore voluntary disclosure (OVD) settlement programs. It generally requires "benign actors" to apply to OVD and then "opt out" before it will consider a lesser penalty. Those who opt out are subjected to audits. Because those opting out face prolonged uncertainty and the risk of even more severe penalties, some agree to pay more than they should. Moreover, IRS resources devoted to auditing and disproportionately penalizing those who come forward to correct honest mistakes are not available to address noncompliance by others who do not come forward.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Expand and clarify the streamlined program to encourage all benign actors (including U.S. residents) to correct past noncompliance using less burdensome and punitive procedures (e.g., expand and clarify who qualifies). Alternatively, adopt the three-category approach (described above), which does not require benign actors to opt out of the OVD program(s). As with other changes to OVD programs, the IRS	The IRS is re-examining the Offshore Voluntary Disclosure Program (OVDP) and the Streamlined Filing Compliance Procedures (Streamlined) in light of the IRS's experience with the programs and feedback from external stakeholders indicating that the penalty structure of OVDP and the terms of Streamlined are not well suited for all taxpayers who have failed to report all offshore financial accounts and income. The IRS is considering modifications to both OVDP and Streamlined to better use limited IRS examination	Yes (Partial)	The National Taxpayer Advocate commends the IRS for modifying the OVD and Streamlined programs to address many of the National Taxpayer Advocate's concerns. She is also pleased that LBI offered her an opportunity to review and comment on some of the changes before they were implemented. However, one significant unaddressed concern is with the quality and transparency of the IRS's FAQ interpretations, which the public has viewed as arbitrary and one-sided. TAS and other stakeholders have encountered

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should allow those who previously applied (even if they have signed closing agreements) to take advantage of the new approach.	resources and to better address the needs of taxpayers with offshore noncompliance issues. In light of ongoing offshore enforcement efforts by the Service and the implementation of FATCA, the OVDP and Streamlined procedures continue to be important programs for the IRS and taxpayers.		many cases where the IRS's interpretation of the FAQs appears inconsistent with their plain language.
2. Educate persons likely to have foreign accounts (e.g., recent immigrants and U.S. citizens residing overseas) about the information reporting requirements. For example, consider working with other agencies such as the U.S. State Department and the Department of Homeland Security to provide information about the requirements to those who apply for an ITIN, visa, or residency status.	The IRS recognizes that heightened public awareness is critical to reporting compliance. A number of steps have been taken by IRS to educate persons with foreign accounts about their filing obligations. For example, information is posted to irs.gov outlining filing obligations and fact sheets and public announcements outlining filing requirements have been issued. This information is published through multiple channels including IRS Twitter account, communications by the IRS Tax Attachés located in U.S. consulates and embassies with assistance from the State	Yes	

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	Department, and National Public Liaison's practitioner email distribution list. Additionally, IRS has established a team to explore efforts which can increase taxpayer assistance and awareness for international taxpayers and taxpayers facing international issues. The FY 2014 FBAR Communication Strategy includes efforts to reach U.S. citizens residing abroad via Internet, social media, and collaboration with the State Department. The IRS has begun discussion with the State Department on issues impacting both agencies.		
3. Issue guidance about what, if any, information reporting applies to AFOREs (i.e., privatized social security accounts held by those who have worked in Mexico).	The Mexico/US IGA addresses information reporting for AFOREs for purposes of foreign financial reporting under FATCA. The IRS will continue to explore whether additional guidance is needed.	No	The National Taxpayer Advocate continues to believe that those who have AFORE accounts deserve to know whether they are required to file information returns. In the absence of such guidance, it should at least tell its employees not to request that they file or penalize them for not doing so.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
4. Incorporate all OVD FAQs and the streamlined program into a Revenue Procedure (or similar guidance published in the Internal Revenue Bulletin) that incorporates comments from internal and external stakeholders.	The IRS has provided instructions to taxpayers for both programs through irs.gov. Feedback has been obtained from both internal and external stakeholders. Multiple meetings with internal and external stakeholders have been held and feedback has been considered. The IRS does not plan to implement this recommendation of incorporating the programs into a Revenue Procedure or similar guidance. We will continue to review other available guidance to determine if additional clarification is necessary.	No	The National Taxpayer Advocate and other stakeholders have recommended the IRS address these transparency concerns by issuing OVD guidance as a revenue procedure, which could be interpreted by attorneys in a single branch of the National Office of Chief Counsel. Interpretive memos (and even emails to the field) would be subject to disclosure and available to the public. Another option would be for the IRS to publish the technical advisors' clarifying interpretations of the FAQs that they issue to the field in the same way that it publishes CCAs. Alternatively, the IRS could regularly clarify the FAQ in areas where the technical advisors have received questions. Such public clarifications would save resources by reducing the number of questions received by IRS technical advisors and SB/SE attorneys, while

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			increasing public confidence that the IRS is processing cases consistently. In FY 2015, TAS will evaluate the OVD program changes and continue to advocate for more transparency in the IRS's interpretation of its OVD program guidance.
5. Reduce the duplicative reporting required on both Form 8938, Statement of Foreign Financial Assets and the FBAR.	Congress enacted both the Title 31 and the Title 26 provisions regarding the reporting requirements of the FBAR (formerly Form TD F 90-2-1, Report of Foreign Bank and Financial Accounts, now FinCEN Form 114) and Form 8938 (Statement of Specified Foreign Financial Assets). Reporting on the FBAR is required for law enforcement purposes under the Bank Secrecy Act, as well as for purposes of tax administration. As a consequence, different policy considerations apply to Form 8938 and FBAR reporting. These are reflected in the different categories of persons required to file Form 8938 and	No	The IRS has apparently determined not to take steps that it is authorized to take that could address duplicative and unnecessary reporting. Its reasons for doing nothing to address this problem remain unexplained. The IRS's stated rationale, which is largely recycled from its response to a similar recommendation in the 2012 report, does not address the counter-arguments presented in the 2013 report. Moreover, the IRS has not proposed to take any alternative steps that could reduce unnecessary taxpayer burden in this area.

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	the FBAR, the different filing thresholds for Form 8938 and FBAR reporting, and the different assets (and accompanying information) required to be reported on each form. Although certain information may be reported on both Form 8938 and the FBAR, the information required by the forms is not identical in all cases, and reflects the different rules, key definitions (for example, "financial account"), and reporting requirements applicable to Form 8938 and FBAR reporting. These differing policy considerations were recognized by Congress during the passage of the HIRE Act and the enactment of Section 6038D. Congress's intention to retain FBAR reporting requirements, notwithstanding the enactment of section 6038D, was specifically noted in the Technical Explanation of the Revenue Provisions Contained in Senate Amendment 3310,		

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	the "Hiring Incentives To Restore Employment Act," Under Consideration by the Senate (Staff of the Joint Committee on Taxation, JCX-4-10 (February 23, 2010)) (Technical Explanation) accompanying the HIRE Act. The Technical Explanation states that "[n]othing in this provision [section 511 of the HIRE Act enacting new section 6038D] is intended as a substitute for compliance with the FBAR reporting requirements, which are unchanged by this provision." (Technical Explanation at p. 60.). Against this background, reporting on the Form 8938 and on the FBAR is not duplicative and both forms must be filed, if required. The IRS is committed to minimizing taxpayer reporting burdens to the extent consistent with the effective implementation of FATCA, and this commitment is incorporated in the regulations implementing new Section 6038D. For		

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	example, the statute excludes from the definition of "specified foreign financial assets" that must be reported on Form 8938 any financial accounts of taxpayers maintained by financial institutions that are U.S. entities (or U.S. territory entities). Thus, taxpayers holding foreign securities in U.S. brokerage accounts are not required to report the foreign securities held in such accounts on a Form 8938. The regulations importantly extend this reporting relief to financial accounts of U.S. taxpayers maintained by controlled foreign corporation subsidiaries of U.S. financial institutions, a particularly important burden reduction for U.S. taxpayers living abroad. This exclusion is fully consistent with the goals of FATCA, because these foreign financial institutions, like their affiliated U.S. financial institutions, have annual 1099 reporting obligations with respect to such accounts under		

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	Chapter 61, greatly reducing the potential for offshore tax evasion by their account holders. The section 6038D regulations carefully tailor the new reporting requirements to compliance risks in additional ways. Most significantly, the regulations attempt to strike an appropriate balance between reporting burdens and compliance benefits by limiting filing requirements to those individuals with specified foreign financial assets totaling above stated minimum dollar thresholds (e.g., $50,000 for single taxpayers resident in the U.S.). Recognizing that an individual residing outside the United States can reasonably be expected to have a greater amount of specified foreign financial assets for reasons unrelated to the policies underlying section 6038D, the regulations substantially increase the reporting thresholds for U.S. persons residing abroad.		

2013 ARC – MSP Topic #23 – REPORTING REQUIREMENTS: The Foreign Account Tax Compliance Act Has the Potential to Be Burdensome, Overly Broad, and Detrimental to Taxpayer Rights

Problem

The Foreign Account Tax Compliance Act (FATCA), which Congress enacted in 2010, fundamentally changes the reporting of foreign assets. FATCA tries to reduce revenue loss by imposing a broad range of additional reporting obligations, along with potential sanctions on U.S. taxpayers and residents, foreign entities, and withholding agents. One goal of FATCA is international data sharing with global information transparency. Questions remain, however, regarding whether such a course is advisable, whether the information being compiled is necessary and will be effectively used, whether the enforcement benefits of FATCA justify the compliance burdens and economic hardships it imposes, and whether the due process rights of taxpayers will be preserved in the process.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. Undertake proactive steps to preserve the due process rights of taxpayers, by issuing FATCA-specific guidance for reasonable cause or similar relief, which adopts a measured approach to the imposition of penalties with respect to benign non-filers.	Certain individuals holding an interest in a foreign bank account or another specified foreign financial asset are required under section 6038D of the Internal Revenue Code to report information about such accounts and assets to the IRS annually. Reporting is required on Form 8938, which must be attached to the taxpayer's Federal income tax return filed for the year. In developing the regulations for section 6038D, the IRS sought to balance the reporting burdens on taxpayers against the tax compliance goals of Congress in enacting	No	Despite the IRS's publication of educational materials and the availability of reasonable cause relief, benign taxpayers may still be unable to navigate complex FATCA requirements and as a result may become subject to disproportionately high penalties. Thus, the IRS needs FATCA-specific reasonable cause formal and informal guidance to alleviate burdens for taxpayers who may fall victim to the reporting errors of FFIs.

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	the new reporting and penalty provisions. The regulations provide significant relief from reporting burdens up front by removing many individuals from the reporting requirements altogether, by providing exceptions that relieve taxpayers from reporting certain assets, and by incorporating special rules to ease valuation methods for certain assets. (See further discussion of burden reduction in the response to MSP 22-5) Although failure to file a Form 8938 if required to do so may result in penalties, section 6038D contains a "reasonable cause" exception to application of the penalty. Under this exception, no penalty will be imposed on any failure to report if it can be shown that such failure is due to reasonable cause and not due to willful neglect. The regulations explain that all pertinent facts and circumstances will be taken into account in determining the		

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	applicability of the statutory reasonable cause exception. See section 1. 6038D-8T(e) of the regulations. There are clear general standards in the Internal Revenue Manual addressing the approach that IRS employees must take whenever considering the applicability of a reasonable cause exception to a civil penalty. The general reasonable cause standards are set out in the IRS's "Penalty Handbook", which is included in the IRM at section 20.1. The Handbook sets forth general policy and procedural requirements for assessing and abating penalties, as well as the criteria for relief from certain penalties. The reasonable cause instructions set forth in the Penalty Handbook provide a sound foundation for fair and uniform application of the new FATCA-related penalties. The IRS will consider options for providing more certainty to taxpayers affected by the new		

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	FATCA requirements and potential new FATCA penalties as more data is collected on specific factors that should be considered in reasonable cause determinations under FATCA.		
2. Ensure that U.S. taxpayers and non-residents have at their disposal a timely and effective mechanism for addressing information reporting errors of FFIs.	The IRS will follow current procedures when a U.S. taxpayer or non-resident provides information that contradicts information received from another source. In addition, U.S. taxpayers and non-residents should contact the FFI immediately upon notification that information provided by the FFI is in error to try and rectify the situation.	No	In the event that FFIs inaccurately report account information to the IRS, affected taxpayers may face extreme difficulty in having this erroneous reporting corrected and proving their compliance. As a result, the IRS should take additional steps to ensure that U.S. taxpayers and non-residents have at their disposal a timely and effective mechanism for addressing information reporting errors of FFIs.
3. Act responsively and expeditiously to implement recommendations of stakeholders that have particular expertise on the effective implementation of FATCA.	Guidance: At every stage of FATCA implementation since its enactment in 2010, the IRS has actively sought out the input of affected parties. In the development of guidance, the FATCA team within the Office of Chief Counsel, working closely with Large Business and	Yes (Partial)	The National Taxpayer Advocate commends the IRS for its efforts to implement and enforce the FATCA regime enacted by Congress. She recognizes that the IRS has been confronted with the challenging task of balancing the reporting and administrative

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	International (LBI) division and the Treasury Department, has requested and received extensive written comments from hundreds of individuals, financial institutions, and their representatives over several iterative cycles of guidance development. In addition, Chief Counsel and LBI representatives have participated in dozens of conferences and meetings throughout the process in order to continually exchange views with those impacted by the new legislation, their advisors, and other knowledgeable stakeholders. All views submitted have been carefully considered, and dozens of changes have been incorporated to reflect valuable suggestions for reducing taxpayer burdens and addressing industry concerns consistent with the compliance objectives of FATCA as envisioned by Congress. Guidance has been provided as		burdens of taxpayers, withholding agents, and FFIs against the tax compliance goals of Congress in establishing the new information reporting and penalty provisions of FATCA. TAS applauds the IRS for its willingness to solicit input and consider the views of multiple stakeholders as part of this iterative process. The National Taxpayer Advocate, along with a range of stakeholders, raised concerns regarding the time constraints and resource demands to which FATCA subjects withholding agents and FFIs. As a response to this input, the IRS published Notice 2014-33 which, among other things, promulgates certain extensions and modifications to existing regulations and allows a "soft" enforcement transition period (2014 and 2015) for withholding agents and FFIs. While the National Taxpayer Advocate acknowledges the IRS's openness to dialogue as

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	expeditiously as feasible consistent with effective implementation of the law, including (i) three detailed notices issued between 2010 and 2011; (ii) comprehensive proposed regulations in February 2012; (iii) final regulations in January 2013; (iv) correcting amendments in September 2013; (v) a draft financial institution agreement and highlights of upcoming changes in October 2013; (vi) a final financial institution agreement in January 2014; (vii) extensive regulations, with additions and clarifications to the previously issued final regulations as well as guidance to coordinate FATCA with preexisting account due diligence, reporting, and withholding requirements under other provisions in the Internal Revenue Code, released in February 2014. The last substantial package of regulations, issued on February 20, 2014, contains over 50		FATCA implementation remains ongoing, she remains concerned about voices and perspectives of individual taxpayers not being heard, especially given the unintended consequences of new FATCA rules for foreign financial institutions, which make it harder for U.S. taxpayers living abroad to open and maintain legitimate bank accounts overseas.

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	discrete amendments and clarifications to the 2013 final regulations that address concerns raised by stakeholders. For example, the amendments/clarifications include those relating to (i) the accommodation of direct reporting to the IRS, rather than to withholding agents, by certain entities regarding their substantial U.S. owners; (ii) the treatment of certain special-purpose debt securitization vehicles; (iii) the treatment of disregarded entities as branches of foreign financial institutions; (iv) the definition of an expanded affiliated group; and (v) transitional rules for collateral arrangements prior to 2017. Forms and publications: The IRS has worked consistently with the Information Reporting Program Advisory Committee (IRPAC), as well as other commentators, to incorporate their suggestions into new forms and instructions and		

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	existing forms and instructions needing revisions to reflect FATCA. In addition, in response to inquiries from stakeholders IRS posted alerts and notes to IRS.GOV to provide information about new FATCA forms for Tax Year 2014. FFI registration: The IRS, recognizing the logistical complexities that FFIs may face in registering and obtaining a Global Intermediary Identification Number (GIIN), has developed a process through which stakeholders may submit their FATCA questions via the IRS's FATCA webpage. Submitted questions are reviewed by a cross-divisional team of IRS subject-matter experts. Questions that are asked frequently and/or address significant issues are routed to the appropriate business/functional unit (IT, LBI, etc.) for further consideration. To the extent that available resources allow, answers are developed, reviewed, and		

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	posted to the IRS's FATCA webpage so that all stakeholders that may have similar questions may benefit from guidance. In addition, the IRS has incorporated FFI stakeholder input in the design of the registration process and FFI registration portal. Specifically feedback from internal and external stakeholders was used in the design of current and future portal functionality, including but not limited to input screens, FFI list search and download tool, and FFI message board status and description of required actions. Form 8938 filer issues and feedback: Since 2012, the IRS has monitored communications with taxpayers concerning Form 8938 filing issues, and updated and enhanced communications channels, such as Frequently Asked Questions (FAQs) and self-help documents on the irs.gov, to address emerging taxpayer issues and problems.		

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	For example, IRS staff have listened to recordings of taxpayer calls to Accounts Management assistors and evaluated email and other electronic feedback to the IRS, to identify and address emerging issues concerning Form 8938. Further, the IRS has specifically attempted to address the concerns and issues received by U.S. embassies from U.S. taxpayers and others concerning FATCA. Additionally, in-person meetings with tax and financial industry representatives have been held with IRS executives from the FATCA program and other IRS organizations to discuss taxpayer concerns."		
4. Take immediate steps to eliminate or reduce duplication between the Form 8938 and the FBAR form.	At this time, no steps are planned to modify the Form 8938, although the form will continue to evolve as experience accumulates under the new FATCA reporting provisions (both those applicable to taxpayers and to third-party financial institutions).	No	The National Taxpayer Advocate remains unconvinced of the need for duplicative reporting of assets on Form 8938 when an asset is also reported or reflected on a timely-filed FinCEN Report 114. Accordingly, The National Taxpayer Advocate has

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	As indicated above in the response to MSP 22-5, when Congress enacted the new Section 6038D reporting requirements to address offshore tax evasion, it intended these requirements to be in addition to the FBAR reporting requirements. Understanding the potential applicability of two reporting regimes for some taxpayers, great care was taken to draft the regulations under Section 6038D so as to minimize taxpayer reporting burdens in every way possible consistent with achieving the offshore tax compliance objectives of Congress. It will continue to be a high priority of the IRS to ensure that taxpayer reporting burdens are appropriately balanced against tax administration needs as experience is gained under FATCA. With respect to the FBAR, while FinCEN has delegated substantial enforcement responsibilities to the IRS, IRS authority does not		recommended that Temp. Reg. § 1.6038D-7T(a) be amended to eliminate this double reporting under FATCA when the assets have already been reported to FinCEN.

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	extend to rulemaking. FinCEN retains sole authority to amend the Title 31 regulations implementing the FBAR filing regime and setting out many of the key filing requirements. Moreover, FinCEN now controls the new FBAR form and its instructions, and FinCEN solely manages the electronic filing process for FBARs. Also See IRS Response to MSP 22-5 Reduce the Duplicative Reporting Required on Both Form 8938, Statement of Foreign Financial Assets and the FBAR.		

2013 ARC – MSP Topic #24 – DIGITAL CURRENCY: The IRS Should Issue Guidance to Assist Users of Digital Currency

Problem

The use of digital currencies, such as bitcoin, is growing. In the four months between July and December 2013, Bitcoin usage has increased by over 75 percent – from about 1,700 transactions per hour to over 3,000. Over the same period, the market value of bitcoins in circulation increased more ten-fold from about $1.1 billion to $12.6 billion. However, the IRS has yet to issue specific guidance addressing the tax treatment or reporting requirements applicable to digital currency transactions. People who are trying to comply with these rules have complained that they are unsure about them. Thus, IRS-issued guidance would promote tax compliance, particularly among those who want to report digital currency transactions properly, and it would reduce the risk that users of digital currencies will face tax consequences that they did not anticipate.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. The National Taxpayer Advocate recommends that the IRS issue guidance that at least answers the following questions: • When will receiving or using digital currency trigger gains and losses? • When will these gains and losses be taxed as ordinary income or capital gains? • What information reporting, withholding, backup withholding, and recordkeeping	Notice 2014-21, released on March 25, 2014, provides guidance in a Q&A format on how existing general tax principles apply to transactions using virtual currency. Notice 2014-21 identifies virtual currency as property and not currency for federal tax purposes; explains how to determine gains and losses, and the character of the gains and losses, from transactions using virtual currency; addresses certain employment tax consequences of payments using virtual currency; and	Yes	The National Taxpayer Advocate commends the IRS for issuing a notice to address many of the unanswered questions about digital currency, and for asking for public comments about other related areas in need of guidance. In a webinar following release of the notice, the IRS also reportedly clarified that information reporting applicable of digital currency is not currently required on Form 114, Report of Foreign Bank and Financial Accounts (FBAR). The newly-issued

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requirements apply to digital currency transactions? • When should digital currency holdings be reported on an FBAR or Form 8938, Statement of Specified Foreign Financial Assets?	addresses certain information reporting and backup withholding requirements that can apply. Guidance necessary to implement FATCA, as well as other potentially applicable reporting and withholding rules, must be prioritized; guidance related to the reporting of virtual currency will be considered at the appropriate time during the phased implementation of FATCA and other compliance rules.		guidance should help digital currency users comply with the rules while also enabling IRS employees to enforce them. If TAS becomes aware of any other major gaps in these rules, it will advocate for further guidance in FY 2015.

2013 ARC – MSP Topic #25 – DEFENSE OF MARRIAGE ACT: IRS, Domestic Partners, and Same-Sex Couples Need Additional Guidance

Problem
The recent Supreme Court case United States v. Windsor held unconstitutional the Defense of Marriage Act of 1996, which effectively had precluded federal recognition of same-sex marriage. Subsequent IRS guidance resolved certain questions for same-sex spouses anticipated by the National Taxpayer Advocate's 2012 Annual Report to Congress (ARC). While the decision and guidance resolve fundamental issues, various questions of implementation remain, while questions about the tax status of unmarried domestic or civil union partners persist.

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
1. The IRS should issue formal and informal guidance for same-sex spouses as questions continue to arise.	Since the Supreme Court's decision in Windsor, the IRS and Treasury Department quickly issued both formal and informal guidance. Revenue Ruling 2013-17 clarified the definitions of "marriage," "spouse," "husband," and "wife" for Federal tax purposes. More particular published guidance has addressed the application of Windsor and the revenue ruling to employment taxes, qualified retirement plans, cafeteria plans and Flexible Spending Arrangements, and portability elections. In addition, the IRS web page contains comprehensive sets of Frequently Asked Questions	Yes	The National Taxpayer Advocate is pleased that the IRS has issued Revenue Ruling 2013-17, effective as of September 16, 2013, to implement the Supreme Court's decision in Windsor. The Revenue Ruling adopted a general rule recognizing a marriage of same-sex individuals that were lawfully married under state law for all federal tax purposes including income, estate and gift, and employment taxes. The IRS followed up with Answers to Frequently Asked Questions posted on its website and released Notice 2014-19, which addressed procedures for

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	regarding both same-sex marriages and civil unions, which are updated as new issues are identified. The IRS will continue to issue both formal and informal guidance as new issues arise.		employers to seek refunds of Social Security and Medicare taxes paid to the extent of employer-provided health coverage to the employee's same-sex spouse and dependents and for employees to amend returns to reduce gross income. The IRS should monitor issues that arise and promptly update its informal guidance to remove obsolete and misleading information.
2. The IRS should issue formal and informal guidance for same- and opposite-sex partners who have marital attributes under civil union or similar state law.	Since the Supreme Court's decision in Windsor, the IRS and Treasury Department have quickly issued both formal and informal guidance to taxpayers. Revenue Ruling 2013-17 clarified the definitions of "marriage," "spouse," "husband," and "wife" for all Federal tax purposes. More particular published guidance has addressed the application of Windsor and the revenue ruling to employment taxes, qualified retirement plans, cafeteria plans and Flexible Spending Arrangements, and	Yes	The National Taxpayer Advocate remains concerned that the IRS has been slow to address various issues about the tax status of unmarried domestic or civil union partners. As various state laws on same-sex marriage, civil unions, and registered domestic partnerships evolve, some same-sex couples may remain uncertain as to whether they are married for state and federal tax purposes. The IRS's web site seems to conflate civil unions with registered domestic

NTA Recommendation	IRS Response	IRS Addressed Yes/No/Partial (TAS's Assessment)	TAS Explanation (if any)
	portability elections. In addition, the IRS web page contains comprehensive sets of Frequently Asked Questions regarding both same-sex marriages and civil unions, which are updated as new issues are identified. The IRS will continue to issue both formal and informal guidance as issues arise.		partnerships and does not address distinctions by jurisdiction. Such one-size-fits-all guidance to registered domestic partners and individuals in civil unions of various jurisdictions may exacerbate confusion and provide ambiguous or misleading advice to taxpayers. These Q&As will be further outdated by June 30, 2014, when thousands of registered domestic partners will be deemed married under the laws of Washington, blurring the seemingly easy distinction between marriage on the one hand and registered domestic partnerships and civil unions on the other.
3. The IRS should issue formal and informal guidance for IRS employees to promptly process the foregoing returns and related claims.	The IRS has responded in a timely and proactive manner to both external and internal stakeholder concerns regarding the Windsor decision. Internal guidance was issued via timely SERP alerts to frontline employees with specific processing procedures.	Yes	The IRS should carefully analyze the attributes of formal relationships that are not marriages under state law and tailor its advice to the needs of taxpayers in various jurisdictions. As the law in domestic and foreign jurisdictions continues to

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	Processing guidance was updated as formal published guidance was issued. Guidance covered both individual (IMF) and employment tax (BMF) related issues. Form 1040X claims received based on the Windsor decision were promptly processed through the normal pipeline process and were subject to the same timeframes as other amended claims.		evolve, the IRS should work closely with TAS and all affected stakeholders. It should issue timely and substantive updates to formal and informal guidance to help taxpayers meet their tax obligations and help IRS employees to promptly process returns and claims related to this dynamic social issue.
4. The IRS should review identity theft and revenue protection filters in light of common filing scenarios by same-sex spouses to ensure that the IRS does not freeze and delay refunds to legitimately married taxpayers.	The IRS Taxpayer Protection filters team takes specific actions to prevent bias against particular segments of the population during the development of filters. Sophisticated algorithmic filters are designed to address specific identity theft schemes, as those schemes are identified. In addition, filters are constantly evaluated on both current and historic data to prove that selected samples do not arbitrarily select compliant taxpayers. With respect to this testing, special attention is paid	Yes	

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	that no group is chosen based on individual characteristics, such as filing type or sexual orientation. This guidance has been shared with all employees involved in identity theft and revenue protection filters. Additionally, processes have recently been implemented that any changes to existing filters or development of new filters requires managerial and IRS executive approval.		