

MSP
#2**The IRS Mission Statement Does Not Reflect the Agency's Increasing
Responsibilities for Administering Social Benefits Programs****RESPONSIBLE OFFICIAL**

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DEFINITION OF PROBLEM

Historically, the IRS's mission has been to collect taxes imposed by Congress to fund federal spending. A notable exception was the enactment of the Earned Income Tax Credit (EITC) in 1975, which allows low income, working taxpayers to receive, through the tax code, government payments that exceed their income tax liabilities (*i.e.*, the EITC is a refundable credit).¹ The EITC has posed numerous challenges for the IRS over the years, as the IRS has sought to increase awareness of the EITC so that taxpayers who qualify know to claim it, while the IRS simultaneously has deployed sophisticated anti-fraud programs to prevent inadvertent and fraudulent overclaims.

Although it took several decades, the IRS in our view is now doing a relatively good job of administering the EITC. In recent years, however, Congress has directed the IRS to administer a host of new benefit programs:

- In 2007, Congress directed the IRS to make Economic Stimulus Payments (ESPs) to most U.S. taxpayers and some non-taxpayers.² Among the consequences, the IRS was overwhelmed with phone calls, receiving more than double the typical number.³ This increase caused the percentage of calls getting through to a customer service representative to drop sharply, from 82 percent in fiscal year (FY) 2007 to 53 percent in FY 2008.⁴
- In 2008, Congress directed the IRS to administer the first of several versions of the First-Time Homebuyer Credit (FTHBC).⁵ Among the consequences of the various versions of the FTHBC provisions were: taxpayers claiming the credit could not electronically file their returns to comply with strict documentation requirements; significant IRS processing and enforcement resources were diverted from the IRS's core work to

¹ Internal Revenue Code (IRC) § 32.

² Economic Stimulus Act, Pub. L. No. 110-185 (2008).

³ On an enterprise-wide basis, the IRS received 166.6 million calls in FY 2008, more than twice the 82.8 million calls it received in FY 2007. IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot: Enterprise Total* (weeks ending Sept. 30, 2007 and Sept. 30, 2008).

⁴ See IRS, Fiscal Year (FY) 2008 Enforcement Results 7, available at http://www.irs.gov/pub/irs-news/2008_enforcement.pdf.

⁵ IRC § 36 Housing and Economic Recovery Act of 2008 (HERA), Pub. L. No. 110-289, § 3011, 122 Stat. 2654; see also American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, § 1006 in Division B, 123 Stat. 115; The Worker, Homeownership and Business Assistance Act of 2009 (WH-BAA), Pub. L. No. 111-92, 123 Stat 2984 (2009); The Homebuyer Assistance and Improvement Act of 2010 (HAIA) 124 Stat. 1356, Pub. L. No. 111-198 (July 2, 2010).

administer the credit; and returns claiming the credit have been subject to a high audit rate and substantial delays in the delivery of legitimate refund claims.⁶

- In 2009, Congress directed the IRS to administer the Making Work Pay (MWP) Credit for working individuals and to coordinate MWP credits with Economic Recovery Payments to certain non-working individuals.⁷ Among the consequences, IRS processing resources were again diverted from core work, and more than seven million returns were not processed timely.⁸
- In 2010, Congress passed major new health care legislation and has directed the IRS to administer large portions of it, including the Premium Assistance Credit, the Individual Penalty for Lack of Coverage, the Employer Penalty, and the Small Business Tax Credit.⁹ The Congressional Budget Office (CBO) has estimated that the IRS will need between \$5 billion and \$10 billion over ten years to implement these provisions.¹⁰

The increasing use of the IRS to administer benefit programs is placing significant strains on the IRS's limited resources and requiring the IRS to perform tasks that go well beyond its current mission statement to "[p]rovide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all."¹¹

From an organizational standpoint, there are significant differences between benefits agencies and enforcement agencies in terms of culture, mindset, and the skills sets and training of their employees. Benefits agencies like the Social Security Administration (SSA) and the Department of Veterans Affairs, despite some shortcomings, are primarily trying to get to "yes" – to help eligible persons qualify for benefits. Enforcement agencies are more in the business of saying "no." As it prepares to administer large portions of the health care legislation, including approving claims by low income persons for health care tax credits and imposing a penalty tax on persons who are required to purchase health care but fail to do so, the IRS will have to change. Rather than being an agency that has increasingly been using automation to send notices to taxpayers saying, in effect, "you owe us," the IRS will move toward becoming an agency that hires and trains caseworkers who will work one-on-one with taxpayers to resolve legitimate disagreements.

⁶ See *Filing Season Update: Current IRS Issues: Hearing Before the S. Comm. on Finance*, 111th Cong. (2010) (statement of Nina E. Olson, National Taxpayer Advocate); *The National Taxpayer Advocate's 2009 Report on the Most Serious Problems Encountered by Taxpayers: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 111th Cong. (2010) (statement of Nina E. Olson, National Taxpayer Advocate).

⁷ Pub. L. No. 111-5, § 1001, 123 Stat. 115, 309 (2009); IRC § 26A.

⁸ IRS, Daily Reject Code Report, Data Source ELF1545 (Oct. 14, 2010) (Cum counts year to date for paper and electronic returns for EC1132 and EC1133); IRS Wage and Investment (W&I) Division, Management Error Report (MER) (Sept. 23, 2010) (Cum counts year to date for paper and electronic returns for EC331 and EC346); Phone Conversation Between W&I and TAS (Oct. 6, 2010) (to clarify reject code amounts and MER Report Data).

⁹ The Patient Protection and Affordable Care and the Health Care (Affordable Care Act), Pub. L. 111-148, 124 Stat. 119 (Mar. 23, 2010) (to be codified as amended at scattered sections of 42 U.S.C.); see also Education Reconciliation Act (HCERA), Pub. L. 111-152, 124 Stat. 1029 (Mar. 30, 2010).

¹⁰ CBO, *Potential Effects of the Patient Protection and Affordable Care Act on Discretionary Spending* (Mar. 15, 2010), available at http://www.cbo.gov/ftpdocs/113xx/doc11307/Specified_Authorizations_HR3590.pdf.

¹¹ Internal Revenue Manual (IRM) 1.2.10.1.1, *The Agency, its Mission and Statutory Authority*, available at <http://www.irs.gov/irs/article/0,,id=98141,00.html> (last visited July 9, 2010).

From a budgetary standpoint, the IRS will require additional resources if it is expected to administer benefits programs without undermining its critical tax collection role. In particular, administering health care will require the IRS to become more of a service agency, yet IRS funding trends have been moving in the opposite direction. From FY 2004 through the proposed FY 2011 budget, funding for the Enforcement account increased by 18 percent while funding for the Taxpayer Services account fell by seven percent in inflation-adjusted terms.¹² Moreover, the account name “Taxpayer Services” considerably overstates the amount of service spending, because a substantial portion of that account pays for the processing of tax returns, which is essentially an overhead function. In FY 2010, only five percent of the IRS budget was allocated for the Pre-filing Taxpayer Assistance and Education subaccount,¹³ which is what most people think of as core taxpayer service.

To help address these challenges, the National Taxpayer Advocate believes the IRS should revise its mission statement to explicitly acknowledge its dual roles of tax collector and benefits administrator. While the wording of a mission statement may seem like “inside baseball,” it has overriding importance for two reasons. First, it serves as the organizing principle around which an agency’s strategic plan is built (which in this case would include increasing the IRS’s service capabilities to work collaboratively with persons who believe the IRS erred in denying a health care credit or imposing a penalty tax). Second, a revised mission statement would make clear that the IRS will require sufficient funding to perform both roles well.

In addition, to carry out its new role as benefits administrator, we encourage the IRS to consider creating a program office dedicated solely to the administration of benefits programs. This new office would be headed by a new deputy commissioner whose position would include the primary responsibility for setting policies and controlling resources to administer existing programs and implement new ones.

ANALYSIS OF PROBLEM

Background

Throughout the years, Congress has increasingly created Code-based social benefit programs. While many of the benefits are designed as refundable credits, social programs can take a variety of forms when run through the tax system, such as income exclusions, deductions, and tax credits.¹⁴ As noted above, the EITC is the main long-standing social benefit the IRS has administered, and more recent programs include the Making Work Pay

¹² For additional information on trends in IRS funding, see National Taxpayer Advocate FY 2011 Objectives Report to Congress 6-8, available at <http://www.irs.gov/pub/irs-utl/nta2011objectivesfinal.pdf>.

¹³ See Department of the Treasury, *FY 2011 Budget in Brief* at 65. See also Most Serious Problem: *The Wage & Investment Division's Is Tasked with Supporting Multiple Agency-Wide Operations, Impeding its Ability to Serve Its Core Base of Individual Taxpayers Effectively*, *infra*. It is important to note that the Pre-Filing Taxpayer Assistance account does not reflect resources dedicated to phone (and web) assistance.

¹⁴ The CBO has estimated that refundable credits will increase by approximately \$500 billion over the next ten years. Doug Elmendorf, CBO, *Federal Budget Challenges* (Apr. 20, 2009), available at <http://www.cbo.gov/ftpdocs/100xx/doc10093/04-20-Harvard.pdf>.

Credit,¹⁵ the First-Time Homebuyer Credit,¹⁶ and various elements of the newly enacted health care legislation.¹⁷

Benefits and Drawbacks of Code-Based Programs

Running social programs through the tax system is beneficial in several respects. These benefits include the potential ability to reduce the burden of the application process (via return filing), direct access by the administrator to eligibility data relating to income, and the relative efficiency of the IRS as a payment processor.¹⁸ The benefits also come with a cost to both the IRS and taxpayers. As discussed in detail below, Code-based social programs can undermine the IRS's ability to perform its core function of collecting taxes. Further, the current enforcement culture of the IRS may not be optimal for the administration of social benefits.

The IRS Has Faced Challenges in Administering Social Programs.

The administration of social programs diverts IRS resources away from the agency's core revenue collection function and can diminish taxpayer service. Over the past several years, as it delivered billions of dollars in recently enacted social benefits such as FTHBC, MWP, and economic stimulus payments, the IRS's resources were stretched thin.¹⁹ The following discussion illustrates some of the challenges faced in administering the FTHBC, MWP credit, and health care reform provisions.

IRS Filters and Documentation Requirements for First-Time Homebuyer Credit Drained IRS Resources.

Because the FTHBC is refundable and worth up to \$8,000, the IRS implemented several safeguards to reduce fraudulent claims. First, the IRS developed filters to identify questionable claims before they were paid.²⁰ Second, the IRS imposed strict documentation requirements that required taxpayers to submit a copy of Form HUD-1, Settlement Statement, or another settlement statement bearing the signature of both the buyer and seller. The documentation requirement created two problems:

1. The HUD-1 could not be electronically filed, so taxpayers claiming the FTHBC had to file paper returns; and

¹⁵ Pub. L. No. 111-5, § 1001, 123 Stat. 115, 309 (2009); IRC § 26A.

¹⁶ IRC § 36 Housing and Economic Recovery Act of 2008 (HERA), Pub. L. No. 110-289, § 3011, 122 Stat. 2654; American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, § 1006 in Division B, 123 Stat. 115; The Worker, Homeownership and Business Assistance Act of 2009 (WHBAA), Pub. L. No. 111-92, 123 Stat. 2984 (2009); The Homebuyer Assistance and Improvement Act of 2010 (HAIA) 124 Stat. 1356, Pub. L. No. 111-198 (July 2, 2010).

¹⁷ The Patient Protection and Affordable Care and the Health Care (Affordable Care Act), Pub. L. 111-148, 124 Stat. 119 (Mar. 23, 2010) (to be codified as amended at scattered sections of 42 U.S.C.); Education Reconciliation Act (HCERA), Pub. L. 111-152, 124 Stat. 1029 (Mar. 30, 2010).

¹⁸ National Taxpayer Advocate 2009 Annual Report to Congress, Vol. 2, at 75-103 (*Running Social Programs through the Tax System*).

¹⁹ See Jeremiah Coder, *The New IRS: Expanding Mission?*, Tax Notes Today (Aug. 9, 2010); Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2010-41-069, *Additional Steps Are Needed to Prevent and Recover Erroneous Claims for the First-Time Homebuyer Credit* (June 17, 2010); TIGTA, Ref. No. 2010-41-128, *Recovery Act: Verifying Eligibility for Certain New Tax Benefits Was a Challenge for the 2010 Filing Season* (Sept. 30, 2010).

²⁰ TIGTA, Ref. No. 2010-41-069, *Recovery Act: Additional Steps Are Needed to Prevent and Recover Erroneous Claims for the First-Time Homebuyer Credit 2* (June 17, 2010).

2. Not all jurisdictions require signatures on settlement statements, which resulted in the IRS rejecting or delaying a significant number of FTHBC claims. Once the IRS recognized the problem, it changed the Instructions to Form 5404, *First-Time Homebuyer -Credit and Repayment of the Credit*, to state that it would accept any statement that is complete and valid according to local law.²¹

The filters and documentation requirements generally caused taxpayer confusion, substantially increased paper return filing, and drained the IRS's discretionary examination resources.²² Moreover, to obtain their non-FTHBC portion of their refunds quickly, some taxpayers filed original returns electronically, omitted the FTHBC, then immediately filed amended paper returns claiming the credit. This approach increased demand on the IRS amended return process.²³

Taxpayer Confusion Resulted from Poor Planning of Making Work Pay Credit Program.

Similarly, the IRS faced unanticipated problems when the American Recovery and Reinvestment Act of 2009 (ARRA) provided for the MWP credit and the one-time Economic Recovery Payment (ERP). The difficulty arose from the requirement that taxpayers not receive the MWP and ERP on the same return. Thus, in order to claim the MWP, the taxpayer had to subtract the ERP received from the amount of the MWP credit on Form 1040, Schedule M, *Making Work Pay and Government Retiree Credits*. However, when filing returns during the 2010 filing season, many taxpayers did not recall whether they received an ERP in 2009. As of October 14, 2010, the IRS had rejected over 3.3 million e-filed Forms 1040, 1040A, and 1040EZ at the point of transmission. A significant percentage of these rejects had one of the following two problems: (1) the taxpayer did not claim the correct amount of the credit or (2) the ERP amount claimed on Schedule M did not match IRS records. Further, among those e-filed and paper returns with Schedule M that the IRS accepted, more than 7.7 million paper and e-filed returns were removed from the processing pipeline and placed in the IRS's Error Resolution System, delaying the processing of the returns and the delivery of refunds.²⁴ Once the IRS realized the problems, it scrambled in the midst of the filing season to develop a web-based application ("Did I Receive an

²¹ Instructions for Form 5404 (Rev. 2010) at 2; IRM 21.6.3.4.2.11 (Oct. 1, 2010); Form 866-H-LTR, *Long-Time Resident Special Rule Supporting Documents* (Feb. 2010); Form 886-H-FTHBC/WHBAA, *First-Time Homebuyer Credit: Worker, Homeownership and Business Assistance Act of 2009 Supporting Documents* (Feb. 2010).

²² The IRS denied FTHBC claims that lacked documentation during initial return processing, using math error authority. It also froze refunds pending civil examinations. TIGTA, Ref. No. 2010-41-069, *Recovery Act: Additional Steps Are Needed to Prevent and Recover Erroneous Claims for the First-Time Homebuyer Credit 2* (June 17, 2010). As of September 14, 2010, over 355,000 original returns claiming FTHBC were selected based on IRS math error authority. In addition, over 118,000 original FTHBC returns were selected and opened for examination. IRS, FTHBC Production Report (Sept. 14, 2010).

²³ Since the IRS began processing FTHBC claims in January 2009, over 205,000 taxpayers claimed the FTHBC on a Form 1040X through July 31, 2010. An additional 909,000 claimed the credit either on a duplicate return or in some other manner. IRS CDW-IMF (Production Cycle 2010 30).

²⁴ IRS, Daily Reject Code Report, Data Source ELF1545 (Oct. 14, 2010) (Cum counts year to date for paper and electronic returns for EC1132 and EC1133); IRS W&I, Management Error Report (Sept. 23, 2010) (Cum counts year to date for paper and electronic returns for EC331 and EC346); Phone conversation between W&I and TAS (Oct. 6, 2010) (to clarify reject code amounts and MER Report Data).

Economic Recovery Payment?") and a comparable telephone system to provide taxpayers with information on ERPs.²⁵

The IRS Faces Significant Challenges in Implementing Health Care Reform.

As part of the recent health care legislation, the IRS will face a number of decisions and guidance projects unrelated to its employees' traditional expertise and skill set. The IRS must administer the following health care provisions: the Premium Assistance Credit, the Individual Penalty for Lack of Coverage, the Employer Penalty, and the Small Business Tax Credit.²⁶ The IRS's ability to administer these provisions under its current organizational principles has been questioned from the outset.²⁷

The challenges facing the IRS are easily illustrated by the Individual Penalty for Lack of Coverage (also referred to as the Individual Mandate).²⁸ To deal with this provision, the IRS will need to determine a taxpayer's compliance with the individual mandate and assess a penalty if coverage is inadequate. This determination is based on a concept of "household income." This may differ from the income reported on the taxpayer's return, because it is a composite of all of the income reported by members of taxpayer's household – information that may not be readily accessible to the IRS.

The IRS Needs to Better Position Itself to Implement New and Existing Social Programs.

While the IRS should be applauded for its accomplishments in implementing major legislative provisions with minimal advance notice, better planning would have alleviated a significant level of the burden imposed on taxpayers and the IRS over the last few filing seasons. It is impossible to determine whether more notice would have allowed the IRS to anticipate and plan accordingly for the problems with the FTHBC documentation requirements or the MWP credit. However, unless the IRS learns from its mistakes and stores its "Lessons Learned" from each initiative, it will likely make similar mistakes in the future. In addition, for each of the social benefit programs discussed above, the work involved multiple IRS functions and required significant coordination and communication. Breakdowns in inter-office communication and coordination caused downstream consequences that burdened both taxpayers and the IRS. To avoid similar problems in the future, the IRS should take a hard look at its mission and organizational structure to address knowledge retention, servicewide communication, and coordination of social program initiatives.

²⁵ Application available at <http://www.irs.gov/individuals/article/0,,id=219514,00.html> (last visited Aug. 21, 2010) (Reject Code 1132 and 1133).

²⁶ The Patient Protection and Affordable Care and the Health Care (Affordable Care Act), Pub. L. 111-148, 124 Stat. 119 (Mar. 23, 2010) (to be codified as amended at scattered sections of 42 U.S.C.); Education Reconciliation Act (HCERA), Pub. L. 111-152, 124 Stat. 1029 (Mar. 30, 2010).

²⁷ *Grassley Questions IRS Ability to Administer Healthcare Reform*, Tax Notes Today (Apr. 16, 2010); Leuyen Dinh, *Former IRS Commissioners Warn of Healthcare Reform's Burden on IRS*, Tax Notes Today (Nov. 10, 2009).

²⁸ The Patient Protection and Affordable Care and the Health Care (Affordable Care Act), Pub. L. 111-148, 124 Stat. 119 (Mar. 23, 2010) (to be codified as amended at scattered sections of 42 U.S.C.); Education Reconciliation Act (HCERA), Pub. L. 111-152, 124 Stat. 1029 (Mar. 30, 2010).

Current and Previous IRS Mission Statements Do Not Reflect Social Program Administration.

Historically, the IRS's mission statement has focused on revenue collection. Before the enactment of the IRS Restructuring and Reform Act of 1998 (RRA 98), the IRS worked under the following statement, dating back to 1964:

The purpose of the Internal Revenue Service is to collect the proper amount of tax at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.²⁹

This mission statement was based on the principles set forth in Revenue Procedure 64-22, *Statement of Some Principles of Internal Revenue Tax Administration*.³⁰

Section 1002 of RRA 98 directed the IRS to revise its mission statement to reflect a more customer service-based approach.³¹ Accordingly, the IRS revised the statement to read: "Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all."³²

The current and previous mission statements addressed only traditional tax administration functions without reference to social programs. The IRS has not revised its mission statement since RRA 98, even as its duties have increased significantly with the enactment of new Code-based social programs, including health care.

The National Taxpayer Advocate believes the IRS should revise its mission statement to reflect its dual mission of collecting federal revenues and delivering federal social benefits. While some may view a mission statement as trivial, such a revision would provide explicit recognition that the IRS is performing two distinct roles. A revised statement would make clear that the IRS will require sufficient funding to perform effectively as both a tax collector and administrator of social benefit programs. It would guard against the IRS having to assume social program responsibilities at the expense of its revenue collection and taxpayer service functions. The IRS should also work toward revising Revenue Procedure 64-22 to include the IRS's responsibility as social benefit administrator.

In revising both the mission statement and revenue procedure, the IRS should canvass similar documents in other domestic and international agencies to determine how they address the delivery of benefits. An example of a federal agency mission statement referencing

²⁹ IRS Policy Statement P-1-1.

³⁰ 1964-1 C.B. 689 (1964) ("Administration should be reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and it should be reasonable within the bounds of the law and sound administration.")

³¹ Pub. L. No. 105-206, 112 Stat. 685 (1998). Section 1002 of RRA 98 provides that the IRS "[s]hall review and restate its mission to place a greater emphasis on serving the public and meeting taxpayers' needs." The Senate Finance Committee report stated that "[t]he Committee believes that taxpayer service is of such importance that the Committee should ... mandate that a key part of the IRS mission must be taxpayer service." S. Rep. No. 105-174.

³² IRM 1.2.10.1.1; *The Agency, its Mission and Statutory Authority*, <http://www.irs.gov/irs/article/0,,id=98141,00.html> (last visited July 9, 2010).

the administration of social programs is that of the SSA. In fact, the SSA's one-sentence statement focuses solely on the distribution of benefits by stating, "Deliver Social Security services that meet the changing needs of the public."³³

The United States Department of Veterans Affairs provides benefits to individuals and has drafted a model vision statement to accomplish its goals: "To provide veterans the world-class benefits and services they have earned - and to do so by adhering to the highest standards of compassion, commitment, excellence, professionalism, integrity, accountability, and stewardship."³⁴

The IRS could also study how its counterparts in other countries describe their duties and functions. For example, New Zealand's Inland Revenue has the dual roles of collecting revenue and distributing social benefits.³⁵ Accordingly, while it does not have a mission statement, the agency always includes both roles in descriptions of its work. For example, in the "Who We Are" section of its website, the agency provides the general description: "We collect most of the revenue that government needs to fund its programmes. We also administer a number of social support programmes."³⁶ In addition, in the more detailed description under that section, it provides: "Inland Revenue plays a critical role in improving the economic and social wellbeing of New Zealanders. Inland Revenue collects 85 percent of the Crown's revenue as well as collecting and disbursing social support programme payments and providing the government with policy advice."³⁷ New Zealand's statements are particularly noteworthy because they are phrased in such a way to remind people of the connection between the collection of taxes and the distribution of benefits.

The IRS Should Consider Realigning its Organizational Structure.

In addition to adjusting its mission statement, the IRS should evaluate its organizational structure, which does not reflect the IRS's dual role as tax collector and social benefit administrator. The current IRS workforce generally lacks the social welfare or caseworker background necessary to interact with taxpayers on social benefit issues. This lack of experience is particularly relevant where IRS employees interact with members of special populations, such as low income, English as a Second Language (ESL), Limited English Proficiency (LEP), disabled, and elderly taxpayers.³⁸

³³ <http://www.ssa.gov/aboutus/> (last visited Aug. 12, 2010).

³⁴ http://www.va.gov/landing2_about.htm (last visited Aug. 12, 2010). The VA's Mission Statement states: "To fulfill President Lincoln's promise 'To care for him who shall have borne the battle, and for his widow, and his orphan' by serving and honoring the men and women who are America's veterans." *Id.*

³⁵ In addition to collecting money for public services, Inland Revenue administers many social programs, including the KiwiSaver Program (Initiative to help individuals with their long-term saving for retirement), Working for Families Tax Credits, Tax Credit for Children, Tax Credit for Income Under \$9,880, Independent Earner Tax Credit, Tax Credits for Payroll Donations, Donations Tax Credit, Childcare Tax Credit. See <http://www.ird.govt.nz/individuals/> (last visited Aug. 13, 2010).

³⁶ <http://www.ird.govt.nz/aboutir/> (last visited Aug. 12, 2010).

³⁷ <http://www.ird.govt.nz/aboutir/who-we-are/> (last visited Oct. 1, 2010).

³⁸ See *Grassley Questions IRS Ability to Administer Healthcare Reform*, Tax Notes Today (Apr. 16, 2010).

Creation of a Program Office and Third Deputy Commissioner Position Could Improve Administration of Social Benefits.

The IRS should consider creating a permanent office to establish policy and coordinate issues associated with social program administration. This office could be headed by a newly created deputy commissioner position with primary responsibility to create policy and develop strategic direction for all social benefit initiatives.³⁹ The office would gain experience in implementing social programs, and as a centralized source of stored institutional knowledge, it would be invaluable in developing future programs. By retaining valuable information from experiences and organizing it into an easily accessible format, the IRS could anticipate problems and plan accordingly. Such stored institutional knowledge could effectively address issues such as timing of payments, third-party information reporting, verification of eligibility for benefits, fraudulent payments, communication strategies, and online tools to help taxpayers determine eligibility.

With well-developed institutional knowledge, the IRS would be better positioned for meaningful consultations with congressional offices or committees on the strengths and weaknesses inherent in running social programs through the tax system. Accordingly, the IRS could recommend that Congress design statutory provisions to avoid some of the proven shortcomings of Code-based programs to maximize the effective and efficient delivery of benefits.

The deputy commissioner would have a budget for the office's staff and have resource allocation authority for all social program initiatives. In designing the new organizational structure, the IRS should evaluate and build upon the experience of the EITC program office, which under its current design has shortcomings that impede its effectiveness. For example, the EITC program office controls the use of appropriated funds, but has no jurisdiction over audit and collection procedures with respect to the target population. This bifurcated approach results in the compliance functions' not conforming their traditional enforcement procedures to the needs and characteristics of the target population. As a result, failure to account for the target population's challenges can result in inaccurate audit results and unnecessary harm to the taxpayer.⁴⁰

Upon establishing the program office, the IRS should launch a comprehensive study on the "Lessons Learned" from running various social benefit programs throughout the years. This would enable the IRS to create a checklist of items to consider when planning a new benefit program – both statutory design and implementation issues. Therefore, the IRS would not have to start from scratch each time it plans to implement a new program. The IRS could develop lists of challenges and ways to design the provision or implementation strategy to address these challenges in the future. The checklist would constantly evolve

³⁹ For example, the office would have the authority to determine the best overall administrative structure of each social benefit program, and determine whether in-house operations or an outside contractor could administer a particular program most effectively.

⁴⁰ For a discussion of the problems with the EITC correspondence exam program, see National Taxpayer Advocate 2007 Annual Report to Congress vol. 2, 93-116 (*IRS Earned Income Credit Audits – A Challenge to Taxpayers*); National Taxpayer Advocate 2004 Annual Report to Congress vol. 2 (*Earned Income Tax Credit (EITC) Audit Reconsideration Study*).

as the IRS gains increasing experience with effective and ineffective statutory designs and implementation strategies.⁴¹

The IRS Should Create Sub-Program Offices for Distinct Components of Social Program Administration.

In our view, the IRS should consider creating a sub-program office for each distinct component of social benefit delivery. For example, one office should focus on financial literacy as well as refund delivery mechanisms, including stored value cards (SVCs) and split-refund options. Other sub-program offices would house expertise with distinct social benefit provisions. This effort would require the IRS to determine which tax provisions constitute social benefits and which require a distinct program office. Some benefits may share enough administrative similarities to warrant sharing a program office. For example, all benefits with eligibility requirements based on family relationships might be best administered through a single sub-program office.

The umbrella program office should be able to control the resources of the sub-programs, including human resource (full-time equivalent or FTE) allocation. As such, each sub-program should have the responsibility to request necessary funds and propose resource allocation, including detailed enforcement and services policies and allocation.

Creation of an Executive Steering Committee Would Improve Coordination of Social Programs Across the IRS.

The IRS should also create a Social Program Executive Steering Committee with senior executives from each organization and function. This council would sign off on initiatives and ensure that each one: (1) is designed to meet the policies of the program office, (2) provides sufficient service to the target population, and (3) does not duplicate another function's efforts. The steering committee members can share their experiences and plan for downstream consequences appropriately. Once the steering committee approves an initiative, the program office would have approval authority and the ability to allocate the appropriate funds.

CONCLUSION

The National Taxpayer Advocate is confident that the IRS is capable of administering social programs, including health care. However, crucial to its success is sufficient funding by Congress and recognition by the IRS that the skills and training required to administer social benefit programs are very different from the skills and training that employees of an enforcement agency typically possess. While enforcement measures are necessary to prevent

⁴¹ The National Taxpayer Advocate set forth preliminary design considerations for social programs in her 2009 Annual Report to Congress. The IRS's checklist could reflect these considerations, but on a more detailed and practical level. National Taxpayer Advocate 2009 Annual Report to Congress vol. 2, 75-104 (Research and Related Studies: *Running Social Programs Through the Tax System*). For example, such a checklist would include a main lesson learned from administering the MWP credit: If eligibility hinges upon the receipt of a payment made by the other agency, the IRS should ascertain whether taxpayers have ready access to payment information. With proper planning, it would be helpful to require payors of such payments to include the amount of the payment on year-end tax information statements sent to beneficiaries.

inappropriate claims, the overriding objective of agencies that administer social benefit programs has traditionally been to help as many eligible persons as possible qualify for the benefits. That mission requires outreach and one-on-one contacts with potentially eligible individuals. If the IRS continues to step up enforcement while reducing taxpayer service programs, it may compromise its ability to administer the new health care credits and penalty taxes in a fair and compassionate way. Thus, it is essential that the IRS revise its current mission statement to also reflect its role as social benefits administrator. As a result, the IRS can propose separate budget requests for benefits programs rather than having to divert resources from traditional enforcement activities. The IRS should also consider realigning its organizational structure to effectively administer these programs in an effective and efficient manner. Such restructuring should involve the creation of a program office to work social program issues exclusively.

In conclusion, the National Taxpayer Advocate offers these preliminary recommendations:

1. Revise the IRS mission statement to reflect two distinct administrative roles of tax collection and social benefits delivery.
2. Revise Revenue Procedure 64-22 to include the IRS's responsibility as social benefits administrator.
3. Create a program office, headed by a new deputy commissioner position, to provide strategic direction for all social benefit programs.
4. Determine which distinct components of social program administration warrant separate sub-program offices.
5. Conduct a comprehensive evaluation of the administration of previous and existing social programs to determine "Lessons Learned" to add value to the planning and implementation of future programs.

IRS COMMENTS

While there are a number of very thoughtful and constructive ideas outlined in the Office of the National Taxpayer Advocate's articulation of these issues, the IRS does not agree that the wording of the IRS's mission statement is one of the "most serious problems" faced by taxpayers.

However, the IRS is always open to input from stakeholders, whether internal or external to the IRS, on the mission and strategic plan of the agency. The tax system is dynamic, and includes myriad provisions that are designed by policymakers to promote economic and social outcomes. The concept of administering economic and social benefits through the tax code is implicit in the IRS's role of running the overall tax system, not something separate and apart. In this context, the IRS continuously balances its programs to provide taxpayer services, conduct outreach and education, and enforce the tax law.

There are a number of helpful and thought-provoking ideas in this piece, which we will certainly consider moving forward.

Taxpayer Advocate Service Comments

We appreciate the IRS's willingness to consider revision of its mission statement. However, we are concerned that the IRS does not recognize the significant impact that its mission statement has on taxpayers and tax administration. A business or other organization typically establishes its mission as its foundation and then builds its strategic plan, operational priorities, budget, and performance measures around it. If the IRS's mission statement does not accurately reflect what Congress has directed it to do, its strategic plan, operational priorities, budget, and performance measures are unlikely to align to the work it is performing. The misalignment between the IRS's current mission statement and the scope of its responsibilities impacts each and every U.S. taxpayer. It is for that reason the National Taxpayer Advocate has identified this disparity as a most serious problem.

For the reasons described earlier, revision of the IRS's mission statement is crucial to ensure the IRS will receive sufficient funding to administer social benefit programs, without diverting resources from its core responsibility of revenue collection. Further, recognition of this separate and distinct responsibility in the agency's mission statement will facilitate the training of employees on the skills unique to social program administration, which are very different from those required for traditional enforcement or tax administration programs.

In its response, the IRS states that "[t]he concept of administering economic and social benefits through the tax code is implicit in the IRS's role of running the overall tax system, not something separate and apart." We generally agree, but believe the current mission statement focuses on the enforcement side of the tax system without reference to the payment of social benefits. That is, the mission statement addresses taxpayers' compliance with tax responsibilities. While there is certainly an enforcement component to social benefit administration, an equally significant element is the achievement of a high participation rate of those who are eligible for benefits. We believe the current mission statement does not cover this vital role, which requires a completely different skill set than is typically required of IRS employees.

While we may not agree on the severity of the existing problem, we look forward to working with the IRS to increase the effectiveness of social benefit administration, especially as the IRS implements the recent health care legislation.⁴² Both taxpayers and the IRS will benefit if the IRS has the ability to propose separate budgets to ensure adequate funding for both functions. Further, the creation of a program office and executive steering committee to exclusively work social program issues will enable the IRS to store institutional knowledge and improve servicewide coordination of social benefit initiatives.

⁴² See *The Patient Protection and Affordable Care Act: A Preliminary Analysis of the Challenges Facing the IRS in Implementing Health Care Reform*, *infra*, vol. 2.

Recommendations

The National Taxpayer Advocate offers these preliminary recommendations:

1. Revise the IRS mission statement to reflect two distinct administrative roles of tax collection and social benefits delivery.
2. Revise Revenue Procedure 64-22 to include the IRS's responsibility as social benefits administrator.
3. Create a program office, headed by a new deputy commissioner position, to provide strategic direction for all social benefit programs.
4. Determine which distinct components of social program administration warrant separate sub-program offices.
5. Conduct a comprehensive evaluation of the administration of previous and existing social programs to determine "Lessons Learned" to add value to the planning and implementation of future programs.