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National Taxpayer Advocate Identifies Priority Areas and Challenges in Mid-Year Report to Congress

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WASHINGTON — National Taxpayer Advocate Nina E. Olson today released her statutorily mandated mid-year report to Congress that identifies the priority issues the Taxpayer Advocate Service (TAS) will address during the upcoming fiscal year. The report emphasizes the importance of taking concrete steps to give meaning to the recently adopted Taxpayer Bill of Rights, issuing refunds to victims of return preparer fraud, continuing to make improvements in the Exempt Organizations area, and expanding the recently announced voluntary return preparer certification program to include competency testing.

The report praises the IRS for implementing the Advocate's longstanding recommendation to adopt a Taxpayer Bill of Rights. In addition, "the IRS ran a generally successful filing season (although taxpayer services were sub-optimal largely due to staffing limitations), instituted a more equitable approach to its Offshore Voluntary Disclosure initiative, and introduced a voluntary system for educating unenrolled return preparers," Olson wrote in a preface to the report. "All this is generally good news. But as we note in the report, the good news also raises additional questions and concerns."

Taxpayer Bill of Rights

On June 10, 2014, the IRS adopted a [Taxpayer Bill of Rights](#) (TBOR), a list of 10 rights that the National Taxpayer Advocate has long recommended to help taxpayers and IRS employees alike gain a better understanding of the dozens of discrete taxpayer rights scattered throughout the multi-million word Internal Revenue Code.

A taxpayer survey conducted for the Taxpayer Advocate Service (TAS) in 2012 found that fewer than half of U.S. taxpayers believe they have rights before the IRS, and only 11 percent said they know what those rights are.

"Taxpayer knowledge and education is the best taxpayer protection there is," the report says. "A comprehensive public outreach campaign is crucial to overcome taxpayers' lack of knowledge about their rights and inform them that the IRS has adopted a TBOR. These initiatives will require a variety of communication plans and tools, all with the goal of making taxpayer rights a part of every IRS communication with the taxpayer."

The IRS has already incorporated the TBOR into a revamped version of Publication 1, *Your Rights as a Taxpayer*, which is the main vehicle for explaining taxpayer rights to taxpayers. The IRS has also created special sections on its public website and its internal website to highlight the 10 taxpayer rights. In addition, TAS has created a [webpage](#) that links existing statutory and administrative remedies to each of the ten rights.

The TBOR, Olson wrote, “has the potential to be an important milestone in tax administration.” She notes that some commentators have questioned the significance of a TBOR, given the lack of enforcement mechanisms. In response, she says that one benefit of articulating taxpayer rights clearly is that doing so will bring into focus areas where there are gaps between rights and remedies, notably with respect to the right to quality service.

“TAS will be very active in FY 2015 and years to come in advocating for and working with Congress and the IRS to fill those gaps, and educating taxpayers about those rights,” Olson wrote. “This activity is central to our mission.”

IRS Treatment of Victims of Return Preparer Fraud

At the same time that hundreds of thousands of taxpayers have become victims of tax-related identity theft, a much smaller number of taxpayers have been victimized by unscrupulous preparers who have stolen their refunds by fraudulently altering information on their returns. The IRS has been working hard to issue refunds to identity-theft victims quickly. By contrast, it has generally declined to issue refunds to victims of preparer fraud at all.

“As I discuss in the Area of Focus, *Return Preparer Fraud: A Sad Story*,” Olson writes, “the IRS has consistently dragged its heels, making one excuse after another, because providing relief to these victims just is not a high enough priority, or more disturbingly, because the IRS simply does not want to provide relief.”

In a typical preparer fraud case, a taxpayer visits a preparer to have his or her (or a joint) return prepared. The preparer completes the return. The taxpayer reviews it, authorizes the preparer to e-file it, and often pays the preparer’s fee. After the taxpayer leaves, the preparer alters the return, often by changing the bank account routing number so the refund is transmitted to the preparer’s own account.

Olson has covered this subject in three of her Annual Reports to Congress, issued two proposed Taxpayer Advocate Directives and two final Taxpayer Advocate Directives, and elevated 25 Taxpayer Assistance Orders involving specific cases to IRS Commissioners (both appointed and acting). Between 2000 and 2011, the IRS Office of Chief Counsel issued four opinions and other guidance that, read together, authorize the IRS to issue replacement refunds to victims of return preparer fraud. However, no refunds have been issued. The report states that some taxpayers have been waiting since the filing of their 2008 tax returns. “Nowhere has the IRS failed to abide by the [recently announced Taxpayer Bill of Rights] more than with respect to the issue of return preparer refund fraud,” Olson wrote.

The report states that IRS Commissioner John A. Koskinen decided on March 14 that the IRS will issue refunds to victims of preparer fraud who have filed police reports with the appropriate law enforcement agencies and met certain other substantiation requirements. To date, the IRS has not implemented the decision, saying it must first resolve certain accounting issues and declining to provide a date certain by which it will issue the refunds.

Exempt Organization Issues

The report contains a detailed discussion of several issues relating to Exempt Organizations (EOs).

In 2013, the National Taxpayer Advocate delivered her mid-year Objectives Report to Congress the month after the disclosure that the EO unit was using questionable criteria to screen applicants for tax-exempt status. The Advocate's report contained a separate volume, [*Special Report: Political Activity and the Rights of Applicants for Tax-Exempt Status*](#), that took a broad look at factors that contributed to the use of the questionable screening criteria and associated processing delays and offered 16 recommendations to address them.

The report released today provides a status update on those recommendations.

In this report, the Advocate outlines a proposal that could provide a clearer test to determine whether an organization seeking exempt status under IRC § 501(c)(4) is operating "primarily" for social welfare purposes. There is currently very little guidance to help make that determination. Among other unresolved issues, one could focus on the percentage of the entity's expenditures, the percentage of the entity's time allocations, the percentage of the entity's advertisements, or other factors.

The report says that an analogous issue arises for organizations seeking exempt status under IRC § 501(c)(3), because if they engage in lobbying activity, the amount of lobbying must be "insubstantial."

To provide (c)(3) organizations with a bright-line option, Congress enacted IRC § 501(h), which allows them to use a numeric test that focuses solely on expenditures. The same option could be made available to organizations applying under IRC § 501(c)(4).

"The National Taxpayer Advocate believes organizations requesting the right to receive contributions exempt from tax should be evaluated on how they expend those contributions," the report says. "Under this analysis, as with the 501(h) election, volunteer time and activity, which do not generate taxable income for which tax exemption would be available in the first instance, are irrelevant to this determination." The National Taxpayer Advocate plans to refine this proposal and include a legislative recommendation in her year-end report to Congress.

The report also expresses concern about the IRS's recently announced decision to adopt a new EO application, Form 1023-EZ. Although the Advocate previously recommended development of a simplified Form 1023-EZ, she objects to the new form because it does not require organizations to describe their mission and activities or send in their formation documents for review.

TAS will attempt to monitor the effects of the streamlined standards and recommend modifications as needed.

Minimum Standards for Tax-Return Preparers

In 2002, the National Taxpayer Advocate began recommending that Congress authorize the IRS to establish minimum standards for tax return preparers. In the absence of

congressional action, the IRS in 2010 began to implement preparer standards on its own. Earlier this year, the U.S. Court of Appeals for the District of Columbia affirmed a lower court decision concluding that the IRS exceeded its rulemaking authority in acting without a statutory grant of authority. Last month, the IRS announced that lacking the authority to continue its mandatory credentialing program, it will implement a voluntary program for the upcoming 2015 filing season.

The report argues that minimum standards for return preparers are important to protect taxpayers from incompetent or unscrupulous preparers. More than 140 million individual taxpayers each year file tax returns, and well over half use return preparers. Yet there are currently no standards for hanging out a shingle and preparing returns, and there is considerable evidence that many preparers lack the knowledge and ability to prepare accurate tax returns.

Significantly, more than 10 million taxpayers who claim the Earned Income Tax Credit (EITC) use unregulated preparers to prepare their returns. Because these taxpayers are low income, the report says they often turn to pawn shops, used car dealers, and check-cashing outlets for return preparation assistance. Without meaningful standards, Olson wrote, “we will continue to subject these low income taxpayers to the actions of incompetent or unscrupulous preparers and we will be unlikely to make progress in reducing the EITC noncompliance rate to an acceptable level, thus harming the public fisc.”

Olson reiterates her longstanding recommendation that a meaningful preparer standards program must contain four components: (1) registration to promote accountability; (2) a one-time “entrance” examination to ensure basic competency in return preparation; (3) continuing education courses to ensure preparers keep up to date with the many frequent tax-law changes; and (4) a taxpayer education campaign to help guide taxpayers to credentialed practitioners (*i.e.*, CPAs, attorneys, and Enrolled Agents) or preparers who have satisfied the above requirements.

The report recommends that Congress pass legislation authorizing the IRS to reinstitute the program it had implemented prior to the U.S. Court of Appeals decision.

Focusing on the 2015 filing season, Olson praised the IRS for adopting a voluntary program that encourages preparers to take continuing education courses. Looking forward, she recommends that the IRS also develop a minimum competency exam as a part of its voluntary program, arguing that the inclusion of individuals who cannot pass a minimum competency exam in a publicly searchable IRS database may confuse or even mislead taxpayer-consumers.

Other Issues Covered in Report

The National Taxpayer Advocate's FY 2015 Objectives Report to Congress also identifies 10 other areas of focus for the upcoming year, reviews the 2014 filing season, describes TAS's efforts to improve its advocacy for and service to taxpayers, summarizes pending TAS research initiatives, and provides an update on TAS's efforts to implement an integrated technology system.

Volume 2 of the report contains the IRS's responses to the administrative recommendations the National Taxpayer Advocate made in her 2013 annual report to Congress, along with

additional TAS comments. Overall, the report made 113 administrative recommendations. The IRS says it has implemented, is implementing, or will implement 69 of the recommendations, although its agreement to do so is contingent on resources in some cases.

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The National Taxpayer Advocate is required by statute to submit two annual reports to the House Committee on Ways and Means and the Senate Committee on Finance. The statute requires these reports to be submitted directly to the Committees without any prior review or comment from the Commissioner of Internal Revenue, the Secretary of the Treasury, the IRS Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget. The first report is due on June 30 of each year and must identify the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in that calendar year. The second report, due on December 31 of each year, must identify at least 20 of the most serious problems encountered by taxpayers, discuss the ten tax issues most frequently litigated in the courts and make administrative and legislative recommendations to resolve taxpayer problems.

ABOUT THE TAXPAYER ADVOCATE SERVICE

The Taxpayer Advocate Service is an independent organization within the IRS. TAS employees help taxpayers who are experiencing financial difficulties, such as not being able to provide necessities like housing, transportation, or food; taxpayers who are seeking help in resolving problems with the IRS; and taxpayers who believe an IRS system or procedure is not working as it should. If you believe you are eligible for TAS assistance, call 1-877-777-4778 (toll-free). For more information, go to TaxpayerAdvocate.irs.gov or irs.gov/advocate. You can get updates on tax topics at facebook.com/YourVoiceAtIRS, Twitter.com/YourVoiceatIRS, and YouTube.com/TASNTA.

Related Items:

- [National Taxpayer Advocate's FY 2015 Objectives Report to Congress](#)
- Tax Toolkit: www.TaxpayerAdvocate.irs.gov