



THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE.

Response Date: December 8, 2021
Completed Date: December 29, 2021

November 9, 2021

MEMORANDUM FOR DOUGLAS O'DONNELL
DEPUTY COMMISSIONER, SERVICES AND ENFORCEMENT

FROM: Erin M. Collins
National Taxpayer Advocate

SUBJECT: Taxpayer Advocate Directive 2021-2 (Backlog of Unprocessed Amended Tax Returns)

TAXPAYER ADVOCATE DIRECTIVE 2021-2

Issues

The IRS reports that 2.7 million Forms 1040-X, Amended U.S. Individual Income Tax Returns, are in the processing pipeline as of October 16, 2021.¹ The IRS's processing of these returns is at a critical level and is having a significant negative impact on taxpayers. The IRS must immediately address this backlog. It must also provide weekly updates with greater visibility on its website regarding the status of amended return processing.

Conclusion

The IRS's delayed processing of amended returns and its failure to provide updated and visible information on its website regarding the processing of Forms 1040-X is exacerbating hardships and uncertainties, particularly for those taxpayers claiming tax refunds to cover the COVID-19 pandemic and natural disaster-related financial distress.

Timely processing of amended tax returns, as well as providing status updates on the processing of these returns, is a mission critical responsibility. The amended return processing backlog must be remedied to ensure the 2.7 million taxpayers have correct accounts as they conclude this tax year.

The IRS is not following its own requirement in the Internal Revenue Manual (IRM)'s to process amended returns within 16 weeks,² or within the 20 week increased timeframe implemented as a result of COVID-19 related processing delays.³ For months TAS has been working with the Wage &

¹ See IRS Operations During COVID-19: Mission-critical functions continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

² IRM 21.5.3.3.1, Locating Amended Returns (Form 1040-X), (June 22, 2021).

³ SERP ALERT 21A0308 issued August 25, 2021.

Investment (W&I) Division executives to resolve the backlog of unprocessed amended returns, to no avail. TAS has also spotlighted the IRS's failure to reveal in a visible and prominent manner on its website, the status of its operations. I have determined that these problems are immediate in nature and that a delay in addressing them would have a significant negative impact on taxpayers. Continued delay negatively impacts taxpayers significantly. For these reasons, I am issuing this Taxpayer Advocate Directive (TAD) without first issuing a proposed TAD.⁴

Directed Actions

I direct the IRS to:

1. Complete its processing of all backlogged / unprocessed amended tax returns by December 29, 2021 or, in the alternative, by December 8, 2021, provide a detailed plan for completion of the inventory backlog processing;
2. Provide weekly updates to TAS throughout the backlog processing work; and
3. Prominently post weekly processing updates on the IRS public website in a clear and unambiguous manner easily accessible to the public, to enhance transparency and promote the taxpayers' *right to be informed*.⁵

Reasons for Taxpayer Advocate Directive

Amended tax return processing backlogs continue with no sign of abating. The IRS reports that 2.7 million individual amended tax returns remained unprocessed as of October 16, 2021 and millions of correspondence pieces that may include numerous unposted amended returns. Each of those 2.7 million returns is a taxpayer whose tax life remains in limbo, if not perilous uncertainty, because the IRS has not taken those returns from delivery to posting.

Extending the processing time beyond its increased 20-week period harms taxpayers in significant ways including:

- Delayed refunds
- Incorrect student loan statements
- Account adjustments impacting refundable credits
- Account adjustments impacting balances due
- Mortgage loan applications
- Advance Premium Tax Credit reconciliation

Taxpayers file amended tax returns for a variety of reasons. For the past three filing seasons,⁶ well over 50 percent of the amended returns filed are filed to obtain refunds, while another three percent

⁴ See IRM 13.9.1.3(2), The TAD Process (Oct. 8, 2020). See also 13.9.1.3.1(2), TAD Without a Proposed TAD (Oct. 8, 2020).

⁵ See IRC § 7803(a)(3)(A).

⁶ These are the counts of amended returns, but some taxpayers may have filed more than one amended return for the same tax year, including filing the same return more than once.

are filed to reduce the amount of tax owed.⁷ The IRS's failure to timely process these amended returns impacts the accuracy of these taxpayers' accounts and deprives them of funds to which they are entitled. The IRS's failure may also subject taxpayers to unwarranted IRS collection activities.

As the IRS continues to identify opportunities for improving processing, it should consider such steps as expanding the Servicewide pilot to scan returns for review by remote employees as the IRS receives the return, reassigning employees from different functions to this higher volume work and enhancing current Form 1040-X filing technology so that a taxpayer's return is processed when filed.

While the IRS extended its timeframe for processing amended returns this past summer,⁸ the published information on the IRS's website tells a different story: “[t]he current timeframe can be *more than 20 weeks ...*”⁹ (emphasis added). This statement is ambiguous and leaves taxpayers wondering, “how much longer than 20 weeks?” The IRS's website statement does not explain, for example, the rate by which each campus is processing returns, where in the process the campuses are experiencing delays, or even the average amount of time that is required to take an amended return from its delivery to full posting and scanning. The “where's my amended return” feature on the IRS's website does not drill into the taxpayer's account to illustrate the location of the taxpayer's amended return in the return processing pipeline. Indicative of taxpayer malcontent are the data showing that the number of hits on the website's “where's my amended return” increased from 4,178,000 in Fiscal Year (FY) 2020 to 11,792,000 in FY 2021 – almost a threefold increase.

The picture for TAS's caseload is likewise not promising. The message in my November 6, 2020, Proposed TAD asked the IRS to immediately resolve the backlog of Operation Assistance Requests (OARs) issued by TAS, and was followed by the Taxpayer Advocate Directive 2021-1 (Process the Backlog of Unprocessed Tax Returns and Correspondence), that directed the IRS to immediately address the significant volume of unprocessed prior year tax returns and correspondence.¹⁰ Nevertheless, backlogs that continue to plague the IRS harm taxpayers, as is borne out by the corresponding increase in the number of taxpayers seeking assistance from TAS. As of October 25, 2021, TAS's inventory included 11,106 cases involving unprocessed amended returns, 3,914 of which have exceeded the 20-week processing timeframe.

I recognize the host of challenges resulting from the pandemic as the Deputy Commissioner for Services and Enforcement, Sunita Lough, explained in her April 14, 2021 response to my TAD 2021-1. However, eighteen months after the onset of the pandemic, and seven months after the Deputy Commissioner's response, it is time for the IRS to address all unprocessed amended tax returns.

We know that the volume of Form 1040-X receipts has been unusually high. In addition to carrying forward 1,234,018 unprocessed FY 2020 amended returns, IRS received an additional 4,567,096 amended returns in FY 2021, a 78 percent increase over FY 2020 receipts.¹¹ We note that due to processing delays, 2,862,487 unprocessed FY 2021 amended returns have now been carried into FY

⁷ Individual Master File data available on the IRS Compliance Data Warehouse as of August 26, 2021.

⁸ SERP ALERT 21A0308 issued August 25, 2021.

⁹ See IRS Operations During COVID-19: Mission-critical functions continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

¹⁰ Taxpayer Advocate Directive 2021-1 (Process the Backlog of Unprocessed Tax Returns and Correspondence) (March 1, 2021).

¹¹ Customer Account Services Form 1040-X Consolidated Inventory Report. Note: carryforward amounts were the amounts shown as “ending inventory” for the last full week shown on the preceding fiscal year report.

2022 for processing. The volume of this inventory continues to mount. Absent an actionable plan, this inventory backlog will continue to create hardships for taxpayers. An analysis of the IRS's unprocessed Form 1040-X inventory reflects that these unworked Form 1040-X returns have been in IRS inventory for an average of 34 weeks, while the oldest 25 percent have been in inventory for an average of 45 weeks¹² and others exceed that time frame. These timeframes far exceed the 20-week timeframe referenced in SERP ALERT 21A0308 and alluded to on the IRS.gov website for resolution. I strongly encourage the IRS to update these timeframes with realistic expectations.

In the Taxpayer Advocate Directive 2021-1, I noted my concerns that “[f]ailing to take the actions ordered in this TAD will result in the further backlog of correspondence and returns.” Though the IRS is making efforts to address the issues of these backlogs and resultant taxpayer concerns, millions of taxpayers continue to wonder when they will know that the IRS processed their return and are left without any additional information from the IRS.

Procedural Requirements

Delegation Order No. 13-3 grants the National Taxpayer Advocate the authority to issue a TAD. A TAD may be issued to (1) mandate administrative or procedural changes to improve the operation of a functional process or (2) grant relief to groups of taxpayers (or all taxpayers) when its implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers.¹³

Reasons for foregoing a proposed TAD

Although a proposed TAD is generally issued before a TAD, the NTA may issue a TAD without first issuing a proposed TAD if she determines that the problem is immediate in nature and a delay in addressing it would have a significant negative impact on taxpayers.¹⁴ The foregoing discussion illustrates the depth and severity of the issue's taxpayers face, as well as the IRS's failure to significantly dent its workload.

Efforts by TAS to work with the OD or function to resolve the issue

TAS has steadily tried to resolve this issue with W&I in our joint weekly meetings. In each of these meetings, we continue to raise our concerns about the magnitude of the IRS's processing delays. In particular, we have called attention to the processing delays not only of TAS's taxpayers' amended returns, but also those of each and every taxpayer whose 2019 or 2020 account remains unsettled. We also spotlighted the need to complete this processing before the onset of the 2022 filing season. Additionally, Rhonda Kirby, TAS Executive Director for Case Advocacy, issued a Bulk TAO to Submission Processing (SP) on May 3, 2021 for unprocessed amended tax returns. On October 25, 2021, she issued two more TAOs, one to Submission Processing and another to Accounts Management (AM) for unprocessed amended tax returns. I have also posted blogs on the need for greater transparency in IRS operations.¹⁵ Nevertheless, we remain without a reasonable action plan

¹²The time elapsed from filing a Form 1040-X of which the IRS input receipt of and which has not yet been processed as of August 26, 2021 (most recent cycle posting date available on the IRS copy of the Individual Master File available on the IRS Compliance Data Warehouse).

¹³ IRM 1.2.2.12.3, Delegation Order 13-3 (formerly DO-250, Rev. 1), Authority to Issue Taxpayer Advocate Directives (Jan. 17, 2001).

¹⁴ See IRM 13.9.1.3, The TAD Process (Oct. 8, 2020). See also 13.9.1.3.1(2), TAD without a Proposed TAD (Oct. 8, 2020).

¹⁵ NTA Blog: TAS Facing Similar Challenges as the IRS: Processing Delays and Low Level of Service, Sept. 1, 2021.

and timeline to eliminate the backlog of unprocessed amended tax returns or a way to inform taxpayers as to their returns' status. This failure to develop a concrete plan of action leaves me no choice but to issue this TAD. In so doing, I highlight that the IRS's failure to bring current the accounts of those taxpayers associated with the 2.7 million amended returns erodes taxpayers' *rights to be informed and to a fair and just tax system*.¹⁶

*Response and action dates*¹⁷

Please respond to this TAD by December 8, 2021 indicating whether you plan to comply, offer a counterproposal, or decline to take the proposed action. If you need more time to respond, I will grant reasonable requests to extend the period to respond, not to exceed the 90-day period provided in IRC §7803(c)(5)(A).

If you modify or rescind this TAD, please provide a detailed written explanation of the reasons. If you are complying with this TAD, a detailed plan to complete the processing of backlogged amended returns should be provided by December 08, 2021 or processing actions to eliminate this backlog should occur no later than December 29, 2021. If you have questions, please contact me, or your staff may contact Vanessa Sloane, Executive Assistant to the NTA.

cc: Charles P. Rettig, Commissioner of Internal Revenue
Kenneth Corbin, Commissioner, Wage & Investment
Bridget Roberts, Deputy Taxpayer Advocate
Rosty Shiller, Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program)

NTA Blog: Bumps in the Road Sequel: Update on the Filing Season Challenges: Part I & II – September 21, 22, 2021.

¹⁶ See IRC § 7803(a)(3)(A)&(J).

¹⁷ If the IRS does not honor a TAD in a timely manner, IRC § 7803(c)(2)(B)(ii)(VIII) requires the NTA to identify the TAD in her Annual Report to Congress.