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Tax News and Industry Updates

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Identity Protection Personal Identification Number (IP PIN)

Cross References

- www.irs.gov/identity-theft-fraud-scams

The IRS has expanded its IP PIN test program to include the states of Florida, Georgia, the District of Columbia, Michigan, California, Maryland, Nevada, Delaware, Illinois, and Rhode Island. Taxpayers in these locations can now voluntarily sign up for the service by going to: https://www.irs.gov/identity-theft-fraud-scams/get-an-identity-protection-pin.

IP PIN. The IRS IP PIN is a 6-digit number assigned to eligible taxpayers to help prevent the misuse of their Social Security Number on fraudulent federal income tax returns. A new IP PIN is issued each year.

If the IRS assigns a taxpayer an IP PIN, the taxpayer is required to use it to confirm identity on any tax return filed during the current calendar year. This includes current year returns as well as any prior year delinquent tax returns. An IP PIN is used only on Forms 1040, 1040PR, and 1040SS. The IP PIN is not used to file for an extension on Form 4868 or to file an amended return on Form 1040X.

Taxpayers eligible to use an IP PIN. A taxpayer is eligible to use an IP PIN if:

- The IRS sent the taxpayer a CP01A Notice containing the IP PIN, or
- The taxpayer filed his/her federal tax return last year as a resident of Florida, Georgia, the District of Columbia, Michigan, California, Maryland, Nevada, Delaware, Illinois, or Rhode Island, or
- The taxpayer received an IRS letter inviting him/her to "Opt-in" to get an IP PIN.

When an IP PIN is issued, it is used by the IRS as an authentication number to validate the correct owner of the Social Security Number(s) listed on the tax return.

For an e-filed return, if the IP PIN is not entered correctly, the return will be rejected. The correct IP PIN must be re-entered for the return to be accepted. If the IP PIN is lost or the taxpayer never received one in the mail, go to the "Retrieve Your Identity Protection PIN (IP PIN)" web page at: https://www.irs.gov/identity-theft-fraud-scams/retrieve-your-ip-pin. Taxpayers can also call 800-908-4490 for specialized assistance.

For a paper return, if the IP PIN is not entered correctly, the return will take longer to process while the IRS validates the information. The IP PINs of dependents are not entered on a paper tax return.

Victim of identity theft. Victims of identity theft will get an IP PIN if:

- They received an IP PIN last year, or
- They received a CP01A notice, or

- They received an IRS letter or notice inviting them to opt-in to get an IP PIN.

If the taxpayer reported to the IRS that he/she was a victim of identity theft, but never received an IP PIN, it may be that the case has not yet been resolved prior to issuance of a new IP PIN for the year, or the taxpayer moved prior to the end of the year and did not notify the IRS. Go to the "Retrieve Your Identity Protection PIN (IP PIN)" web page or call 800-908-4490 for specialized assistance.

Refunds. How quickly a taxpayer receives a refund depends on the individual return information. If an IP PIN is included when filing, the return will be subject to the same validity checks as other returns not requiring an IP PIN.

Note: The IP PIN is still a test program, but will likely become standard procedure for all taxpayers in the near future. The reality of today is all online activity is at-risk of being hacked by identity thieves. Tax professionals should strongly encourage all clients who are eligible to use an IP PIN.

Refund Scams

Cross References

- IR-2018-27

The IRS is warning taxpayers of a quickly growing scam involving erroneous tax refunds being deposited into their bank accounts. After stealing client data from tax professionals and filing fraudulent tax returns, the scammer uses the taxpayer's real bank accounts for the deposit. Various tactics are then used to reclaim the refund from the taxpayer.

In one version, the scammer posing as a debt collection agency official acting on behalf of the IRS contacts the taxpayer and says a refund was deposited in error, and asks the taxpayer to forward the money to their collection agency.

In another version, the taxpayer who received the erroneous refund gets an automated call with a recorded voice saying he is from the IRS and threatens the taxpayer with criminal fraud charges, an arrest warrant, and a blacklisting of their Social Security Number. The recorded voice gives the taxpayer a case number and a telephone number to call to return the refund.

The IRS has an established procedure for returning an erroneous refund to the agency. The IRS also encourages taxpayers to discuss the issue with their financial institutions because there may be a need to close a bank account.

If the erroneous refund was a direct deposit, contact the Automated Clearing House (ACH) department of the bank or financial institution where the direct deposit was received and have them return the refund to the IRS. Then call the IRS at 800-829-1040 for individuals, or 800-829-4933 for businesses, to explain why the direct deposit is being return.

If the erroneous refund was a paper check, see the IRS scam alert website (https://www.irs.gov/newsroom/) for instructions.

If an e-filed return is rejected because a return bearing the taxpayer's Social Security Number is already on file, follow the steps outlined in the Taxpayer Guide to Identity Theft, posted on the IRS website (https://www.irs.gov/newsroom/taxpayer-guide-to-identity-theft). Taxpayers unable to file electronically should mail a paper tax return along with Form 14039, *Identity Theft Affidavit,* stating they were victims of a tax preparer data breach.

The IRS also urges tax professionals to be on high alert to unusual activity. Criminals increasingly target tax professionals, deploying various types of phishing emails in an attempt to access client data. Thieves then use this data to impersonate taxpayers and file fraudulent tax returns for refunds. Tax practitioners should not communicate solely by email with potential or existing clients, especially if unusual requests are made.

Note: Some tax professionals have a separate dedicated computer that is exclusively used for tax preparation and a second computer that is used for web browsing, email correspondence, and other non-tax preparation related use. Client data is stored only on the tax preparation computer and external hard drive backups. The other computer contains no client data or client information on its hard drive. The tax preparation computer and backup hard drives are turned off and locked up when not in use. Implement a "no click" policy, meaning under no circumstance, is an email attachment or link clicked on, even if the sender is known. Ask the client to send their information by snail mail if they cannot personally hand deliver their tax information or upload the data to a portal. Using two computers is cheaper and easier than trying to deal with a data breach or client identity theft.

Gig Economy

Cross References

- TIGTA Report Dated February 14, 2019

The gig economy is one term used to describe self-employed taxpayers engaged in businesses using delivery apps, such as Uber, Lyft, Uber Eats, and Door Dash. The Treasury Inspector General for Tax Administration

(TIGTA) recently released a report on the self-employment tax compliance of taxpayers in the gig economy.

The IRS last estimated the self-employment portion of the annual Tax Gap at $69 billion. The Tax Gap is the difference between true tax liability for a given tax year and the amount that is paid on time. It is comprised of the non-filing gap, the underreporting gap, and the underpayment, or remittance gap.

The gig economy has since emerged and grown considerably, with thousands of new taxpayers each year being responsible for self-employment taxes. The TIGTA audit was initiated to evaluate the self-employment tax compliance of taxpayers who earn income in the gig economy and assess the IRS's processes and controls that identify and address noncompliance with self-employment tax requirements.

TIGTA reviewed cases in the IRS' Automated Underreporter (AUR) program for taxpayers who work in the gig economy and who have discrepancies between what is reported on their income tax returns and payments reported to the IRS on Tax Years 2012 through 2015 Forms 1099-K, *Payment Card and Third Party Network Transactions,* by payers. The review was limited to nine commonly recognized gig economy payer companies and identified 264,346 cases with potentially underreported payments included on Form 1099-K. The number of discrepancies involving Forms 1099-K from these gig economy payers increased 237% from 2012 to 2015.

Like other types of AUR inventory, many cases were not selected to be worked by the AUR program due to the large volume of discrepancies that were identified. Specifically, 59% of taxpayers were not selected to be worked by the AUR. This includes 2,817 taxpayers with potential underreporting of their Form 1099-K income in all four tax years, involving $2.7 billion in potentially underreported payments included on Form 1099-K.

AUR employees removed thousands of cases from inventory without justification or with justification that was inaccurate. Many of the cases that were worked included errors by IRS examiners. Also, AUR employees rarely refer questionable deductions claimed by taxpayers on amended returns filed in response to receiving a notice from the AUR program to the Examination function.

Treasury Regulations do not require certain gig economy businesses to issue Form 1099-K unless workers earn at least $20,000 and engage in at least 200 transactions annually. Consequently, many taxpayers who earn income in the gig economy do not receive a Form 1099-K. As a result, their income is not reported to the IRS. When income is not reported to the IRS, taxpayers are more likely to be noncompliant.

TIGTA recommended that the IRS take several corrective actions to improve how the AUR program addresses self-employment tax noncompliance, selects cases, and conducts quality reviews. Additionally, TIGTA recommended that the IRS Office of Chief Counsel develop and issue guidance to help clarify current third-party reporting regulations and work with the Department of the Treasury Office of Tax Policy to pursue regulatory or legislative change to reduce the information reporting gap.

Gambling Losses Cannot Be Deducted as Casualty Losses

Cross References

• *Mancini,* T.C. Memo 2019-16, March 4, 2019

Gambling winnings for the 2018 tax year are reported as income on line 21, Schedule 1 (Form 1040). Gambling losses are deducted on line 16, Schedule A (Form 1040), limited to the total amount reported as gambling winnings. Casualty loss deductions for the year are not limited to income. They are treated as itemized deductions (Schedule A), subject to a $100 per event reduction, and a 10% of AGI reduction. For tax years after 2017, a personal casualty loss is deductible only if attributable to a federally-declared disaster. The taxpayer in this case tried to deduct gambling losses in excess of gambling winnings for the 2008 through 2010 tax years as casualty losses.

Over the years the taxpayer had significant earnings, saved carefully, and strategically bought real estate. He gambled occasionally, but only small amounts, and never more than $100 at a time.

In 2004, he was diagnosed with Parkinson's disease. He was prescribed Pramipexole, the generic name for Mirapex. The drug dosage was gradually increased over the years, and the taxpayer's symptoms improved significantly. However, in 2008, he began doing odd things. He vacuumed a lot and became compulsive about his cleanliness. He spent a week researching and obsessing over which mattress to buy. He started falling asleep suddenly while driving. He had suicidal thoughts. And he became a compulsive gambler.

Over the next two years, gambling wiped out all of his bank accounts and all but $10,000 of his retirement savings. In 2009 he also started selling his real estate for less than fair market value. He sold a beach house for $995,000 that was worth about $1.2 million. And he did a quick sale of property worth about $300,000 for only $90,000. The proceeds from these sales were used to pay gambling debt.

By 2010, the doctor took the taxpayer off Pramipexole, and the compulsive behavior stopped. The taxpayer still gambles occasionally, but only to the limited extent he did before 2008. The court noted that the taxpayer is not the only person who became compulsive while taking Pramipexole. It is a dopamine agonist, meaning it activates dopamine receptors in the brain. That helps Parkinson's patients control their movements, but can also affect the brain's executive function in a way that distorts risk/reward assessments. Medical reports note that users of the drug can develop impulse control disorders (ICDs), which make sufferers unable to control their behavior despite negative consequences. The most common ICDs observed among Parkinson's patients taking Pramipexole are compulsive eating, shopping, gambling, and hyper sexuality. The correlation between Pramipexole and ICDs is widely accepted in the medical field, and physicians prescribing the drug closely monitor patients for signs that they are developing an ICD.

For 2008, the taxpayer reported $149,000 in gambling winnings and deducted $149,000 for gambling losses to the extent of winnings. On an amended return for 2008, he claimed an additional $1 million casualty loss for investment portfolio losses. For 2009, he reported $107,000 in gambling winnings and deducted $107,000 for gambling losses to the extent of winnings. On an amended return for 2009, he claimed a $1.8 million casualty loss for investment portfolio losses. On his 2010 return, he reported $45,000 in gambling winnings, deducted $45,000 for gambling losses, and claimed a $603,000 casualty loss for investment portfolio losses.

The tax court agreed with the taxpayer that Pramipexole caused his compulsive gambling and was the cause of his substantial investment portfolio losses. The main issue before the court was whether or not his compulsive gambling losses qualify as casualty losses.

IRC section 165(c)(3) states a taxpayer can deduct nonbusiness losses that arise from fire, storm, shipwreck, or other casualty, or from theft. Neither the Internal Revenue Code nor the regulations define "other casualty." Courts have consistently held that the general term "other casualty" must mean something like the specific terms that precede it (fire, storm, and shipwreck). As a result, "other casualty" means a loss arising from something that is sudden, unexpected, or unusual, and not from progressive deterioration due to a steadily operating cause, even if the damage was not discovered until it was complete. Damage caused by termites is an example of a slow loss that courts have ruled is not deductible as a casualty loss.

The taxpayer argued his ICD was sudden because it manifested abruptly once his dosage reached a certain level, it was unexpected because neither he nor his doctor anticipated it, and it was unusual.

The IRS stated that a casualty loss is deductible only if the taxpayer's property suffered physical damage. The taxpayer argued that physical damage to property is not required for a casualty loss because the Internal Revenue Code does not limit the definition of property to just physical assets. IRS Pub. 547, *Casualties, Disasters, and Thefts,* on page 4 of the 2017 version (page 5 of the 2018 version) states a taxpayer can deduct as a casualty the "loss on deposits [that occurs] when a bank, credit union, or other financial institution becomes insolvent or bankrupt." This suggests that physical damage to the property might not be required for a casualty loss.

The court stated that IRS publications are not law. But even if they were, IRS Pub. 547 states that only taxpayers can claim as a casualty the type of loss that occurs when a bank becomes insolvent or goes bankrupt. It does not authorize casualty-loss deductions for a decrease in bank accounts generally. The court stated it is not going to overturn decades of case law that states physical damage to property is a prerequisite of a casualty loss deduction.

The court stated that even though the taxpayer's brain was damaged by the Pramipexole, it did not cause physical damage to the taxpayer's property. The depleted bank accounts, and the money left on the table when the taxpayer made bad real estate deals, did not suffer any physical damage.

The court also stated that his loss was not sudden, which is a requirement for a casualty loss. Even if the onset of the ICD was sudden, and even if the taxpayer didn't realize what was happening to his savings until three years later, the gambling losses grew gradually over time. That makes the losses he sustained just like damage from slow-moving termites or dry rot, which can start without the taxpayer's knowledge and take years to discover, but is not a casualty because the damage is not sudden.

Based upon these factors, the tax court ruled the taxpayer's gambling losses were not casualty losses.

National Taxpayer Advocate Report to Congress

Cross References

- IR-2019-11, February 12, 2019

National Taxpayer Advocate Nina E. Olson has released her 2018 Annual Report to Congress, describing challenges the IRS is facing as a result of the recent government shutdown and recommending that Congress provide the IRS with additional multi-year funding to replace its core 1960s-era information technology (IT) systems. The release of the National Taxpayer Advocate's report was delayed by a month because of the government shutdown.

Olson also released the second edition of the National Taxpayer Advocate's "Purple Book," which presents 58 legislative recommendations designed to strengthen taxpayer rights and improve tax administration.

The largest section of the report, which identifies at least 20 of the most serious problems taxpayers face in their dealings with the IRS, is titled, "The Taxpayer's Journey," and is organized sequentially to track a taxpayer's interactions with the tax system from start to finish. Among other issues, it addresses the ability of taxpayers to obtain answers to tax-law questions, return filing, notices, audits, collection actions and Tax Court litigation. The report also contains "road maps"—pictorial representations of the process.

"One of our goals in creating these roadmaps was to help readers understand the complexity of the taxpayer journey," Olson wrote. "It was challenging for us to create these roadmaps and will probably be difficult for readers to follow them, which hints at the extreme frustration many taxpayers experience when they have to interact with the IRS."

Impact of the Government Shutdown on IRS Operations and Taxpayer Rights

In the preface to the report, Olson discusses the impact of the recent government shutdown. A major point of discussion before and during the shutdown was the permissible scope of IRS activities. Under the Anti-Deficiency Act, federal funds may not be spent in the absence of an appropriation except where otherwise provided by law. One exception provided by law is for "emergencies involving the safety of human life or the protection of property." Although not stated in the law or Justice Department guidance, the IRS Office of Chief Counsel has interpreted the "protection of property" exception to apply only to the protection of government property – not a taxpayer's property.

The report states this narrow interpretation can cause severe harm to taxpayers. When the IRS issues a levy to a bank, the bank must freeze the taxpayer's account for 21 days, and then if the levy has not been released, the bank must turn the funds over to the IRS. The Internal Revenue Code requires the IRS to release a levy if it has determined the levy "is creating an economic hardship due to the financial condition of the taxpayer." However, the IRS's legal interpretation of the Anti-Deficiency Act would not permit personnel to be excepted to release levies even in extreme cases, such as where a taxpayer needs the levied funds "to pay for basic living expenses [or even] a life-saving operation," Olson wrote.

The IRS's Lapsed Appropriations Contingency Plans excepted employees of the Taxpayer Advocate Service (TAS) to open mail solely to search for checks payable to the government. The plans do not permit TAS employees to assist taxpayers experiencing an economic hardship.

"The IRS's authority to collect revenue is not unconditional," Olson wrote. "It is conditioned on statutory protections, and a lapse in appropriations does not eliminate those protections." If the IRS does not change its interpretation of the Anti-Deficiency Act, the report recommends Congress amend the Act to ensure that taxpayer protections and rights enacted by Congress remain available when the IRS takes enforcement action against a taxpayer during, or has taken enforcement action just prior to, a shutdown.

The report states the shutdown has had a significant impact on IRS operations. The IRS opened the 2019 filing season immediately after the shutdown ended, and a comparison of IRS telephone service during the first week of the 2019 filing season and the first week of the 2018 filing season shows taxpayers are having greater difficulty getting help this year. During the first week of the 2018 filing season, the IRS answered 86% of calls routed to an Accounts Management telephone assistor, and the average wait time was about four minutes. During the first week of this year's filing season, the IRS answered only 48% of its calls, and the average wait time was 17 minutes.

Among taxpayers calling the Automated Collection System line, 65% got through and waited an average of 19 minutes last year. This year, only 38% of calls were answered, and the average wait time was 48 minutes.

Among callers seeking help on the IRS's Installment Agreement/Balance Due telephone line, the IRS answered 58% of its calls with an average wait time of 30 minutes during the first week of the filing season last year. This year, the IRS answered only 7% of its calls, and taxpayers who got through had to wait an average of 81 minutes to speak with an assistor.

During the shutdown, correspondence inventories ballooned. By January 24, the IRS had more than five million pieces of mail waiting to be processed; it had 80,000 responses to fiscal year (FY) 2018 Earned Income Tax Credit (EITC) audits that had not been addressed (likely causing eligible taxpayers to have their legitimate EITC claims frozen during the 2019 filing season); and it had 87,000 amended returns waiting to be manually processed.

"Make no mistake about it," Olson wrote. "These numbers translate into real harm to real taxpayers. And they represent increased re-work for the IRS downstream, at a time when the IRS is already resource-challenged. The IRS will be facing tough decisions in light of the shutdown's impact."

On a "dedication" page at the beginning of the report, Olson expressed her appreciation to the IRS workforce, including TAS employees. "Most IRS employees experienced financial challenges as a result of missing two pay checks," she wrote. "Yet when the shutdown ended, IRS employees returned to work with energy and generally hit the ground running. The IRS faces many challenges as an agency—and this report documents many of them—but the dedication of the IRS workforce is a notable bright spot."

Funding for IT Modernization

The report's #1 legislative recommendation is that Congress provide significantly more funding for the IRS to replace its antiquated core IT systems. The IRS systems that hold the official records of taxpayer accounts—the Individual Master File and the Business Master File—date to the 1960s and are the oldest major IT systems still in use in the federal government. In addition, taxpayer information is stored in over 60 separate case management systems that generally do not communicate with each other. There is no database that holds or provides a 360-degree view of the taxpayer's account and interactions with the IRS. As a result, although the IRS is trying to create taxpayer-friendly online accounts, the report states the inability to pull data from a consolidated case management system poses a significant obstacle.

The report states the IRS does not have an enterprise case selection system, so it cannot be sure it is focusing on the right taxpayers or the right issues in its outreach, audit, and collection activities. A key measure of audit effectiveness is the "no change" rate, which reflects the percentage of audits that do not change a taxpayer's liability for the year under audit. From FY 2010 through FY 2018, the report states, the average no change rate was 23% for field audits conducted by the Small Business/Self-Employed Division and 32% for field audits conducted by the Large Business and International Division. With better technology, the report states, the IRS audit functions could do a better job of selecting productive cases.

In 2018, the IRS experienced a systems crash on the final day of the filing season, forcing it to extend the filing season by a day. The crash prompted talk of the risk of a catastrophic systems collapse. "That risk does, indeed, exist," the report states. "But there is a greater risk: IRS performance already is significantly limited by its aging systems, and if those systems aren't replaced, the gap between what the IRS should be able to do and what the IRS is actually able to do will continue to increase in ways that don't garner headlines but increasingly harm taxpayers and impair revenue collection."

According to the report, the IRS is effectively the "accounts receivable department" of the federal government. In FY 2018, it collected nearly $3.5 trillion on a budget of $11.43 billion—a return on investment of about 300:1. Yet the report states funding for IRS technology upgrades—provided through the Business Systems Modernization (BSM) account—has been very limited in both absolute and relative terms. As the following chart shows, BSM funding was reduced by 62% from FY 2017 ($290 million) to FY 2018 ($110 million) and constituted just one percent of the agency's overall appropriation in FY 2018.

IRS Appropriations — Fiscal Years 2017 – 2019

Fiscal Year	*BSM Funding*	*Total IRS Funding*	*BSM as % of Total IRS Funding*
2017	$290 M	$11.24 B	2.6%
2018	$110 M	$11.43 B	1.0%
2019 (House Bill)	$200 M	$11.62 B	1.7%
2019 (Senate Bill)	$110 M	$11.26 B	1.0%

The report states congressional funding for the BSM account has been limited in part because the IRS historically has not done an effective job of planning and executing technology upgrades. To address that concern, the report recommends that additional funding be provided, subject to accountability measures. Specifically, Olson recommends that Congress provide the IRS with additional dedicated, multi-year funding to replace its core IT systems pursuant to a plan that sets forth specific goals and metrics and is evaluated annually by an independent third party.

Other Major Issues Addressed

Federal law requires the Annual Report to Congress to identify at least 20 of the "most serious problems" encountered by taxpayers and to make administrative and legislative recommendations to mitigate those problems. Overall, this year's report identifies 20 problems,

makes dozens of recommendations for administrative change, makes 10 recommendations for legislative change, analyzes the 10 tax issues most frequently litigated in the federal courts, and presents six research studies and one literature review.

Among the problems addressed are the following:

Obtaining answers to tax law questions. In 2014, the IRS implemented a policy under which it is only answering tax-law questions during the filling season (January through mid-April). It also narrowed the scope of questions it is answering during the filing season by expanding its list of "out-of-scope" topics. The IRS justified these restrictions as a cost-saving step. The National Taxpayer Advocate criticized this decision, maintaining that providing taxpayers with timely and accurate answers to their tax-law questions is a core IRS function, and she has urged the IRS to reverse its policy. The report highlights that the IRS does not collect information when it receives calls asking questions about topics deemed out-of-scope. As a consequence, it does not know when a large number of taxpayers may be confused about a topic and additional guidance should be provided.

Last Spring, the IRS stated it would answer tax-law questions relating to the recently passed Tax Cuts and Jobs Act of 2017 (TCJA) throughout the year. To assess the customer experience with respect to tax-law questions, TAS developed and tested a series of questions relating to:

i) Issues deemed in-scope that did not change under the TCJA,
ii) Issues deemed out-of-scope, and
iii) Issues impacted by the TCJA.

TAS callers encountered inconsistent service, even when asking questions about the TCJA that the IRS had indicated it would answer. In the Fall, several TAS callers were read the same script: "There is no tax law personnel at this time due to budgetary cuts. This tax topic cannot be answered at this time. The employees that will be able to answer this question will be available beginning January 2, 2019, through April 15, 2019."

On many calls, the answering employee told the caller the call would be transferred; the transfer ended with a pre-recorded message stating the question was out-of-scope and the call was then disconnected. On other calls, answering employees told callers they had not yet received any or much training on the TCJA and apologized for being unable to help. (To assist taxpayers, TAS developed a Tax Reform Changes website addressing common TCJA questions.)

The report recommends the IRS answer tax-law questions year-round; that it deem all questions relating to major new tax legislation as "in scope" for at least two years; and that it track calls and contacts about out-of-scope topics, so it can provide additional guidance on frequently raised issues.

Lack of disclosure of chief counsel legal advice. Over several decades, the IRS has contested lawsuits seeking public access to various forms of legal guidance. In 2007, it settled a case seeking access to legal advice the Office of Chief Counsel provides to national office program managers known as "Program Manager Technical Advice" (PMTA). Yet the Office of Chief Counsel releases relatively few PMTA memos to the public despite the wide range of issues on which it is asked to opine.

TAS sought to determine the standards the Office of Chief Counsel applies in determining which guidance to release. TAS found that the Office of Chief Counsel has not developed written standards describing what constitutes PMTA; it relies on the judgments of hundreds of National Office attorneys who have received little to no training on this subject to decide what to transmit for disclosure; it has no systemic way to identify PMTA or assess general compliance with the terms of the court settlement; and it asserts that only advice provided in memorandum form must be disclosed. The Office of Chief Counsel takes the position that when an attorney provides advice to a national office program manager, the disclosure requirements can be avoided if the attorney transmits the advice as an email rather than as a memorandum (although it says it does not encourage this practice).

The report recommends the Office of Chief Counsel develop clear written guidance that defines when advice constitutes PMTA; that it eliminate the loophole that allows attorneys to keep advice secret if they transmit it by email; and that it establish a process to ensure that advice that should be disclosed as PMTA is identified and disclosed in a timely manner.

Underutilization of IRS free file program. In 2002, the IRS entered into an agreement with a consortium of tax software companies under which the companies would provide free tax return software to a certain percentage of U.S. taxpayers, and in exchange, the IRS would not compete with these companies by providing its own software to taxpayers. The agreement has been renewed at regular intervals, and for at least the past decade, the agreement has provided that the consortium would make free tax return software available for 70% of taxpayers (as measured by adjusted gross income).

In 2018, taxpayers filed about 152 million tax returns. Thus, about 106 million taxpayers (70%) qualified to use

free tax return software. Yet fewer than 2.5 million taxpayers (less than two percent) chose to use a Free File product, with tens of millions of Free File-eligible taxpayers choosing to purchase tax return software instead. The report states the Free File Program is failing to serve its intended purpose of making e-filing cost-free for a large percentage of U.S. taxpayers. The report states there is no marketing budget for the program, the Free File website is confusing, and the IRS has not conducted an effective evaluation of the program to understand why taxpayers eligible to use it are not doing so.

The report recommends, among other things, that the IRS develop actionable goals for the Free File Program, including targeted-use percentages, prior to entering into a new agreement with the consortium; that it work with TAS to create measures evaluating taxpayer satisfaction with the Free File Program; that it test each participating company's software to assess its ability to complete various forms and schedules; and that it prepare an advertising and outreach plan to make taxpayers, particularly in underserved communities, aware of the services the Free File Program provides. If the Free File Program is not substantially improved, the report recommends the IRS terminate it and instead work with the software industry to improve Free Fillable Forms (the digital equivalent of paper forms) for taxpayers who wish to use them.

The National Taxpayer Advocate Purple Book

As part of the report, the Advocate has released the second edition of "The Purple Book," which presents 58 legislative recommendations intended to strengthen taxpayer rights and improve tax administration. Many of the recommendations have been made in detail in prior National Taxpayer Advocate reports, but others are presented in this publication for the first time.

During the last few years, Congress has showed renewed interest in examining and improving the operations of the IRS. The House Ways and Means Subcommittee on Oversight has held several hearings to consider "IRS reform," and the House passed the Taxpayer First Act of 2018 by a unanimous vote of 414-0 last April. Several bills to improve IRS operations were also introduced in the Senate. Although none of these bills ultimately was enacted and the National Taxpayer Advocate does not endorse every provision in every bill, the report states these bills overall would go a long way toward helping taxpayers and modernizing the IRS, and it urges Congress to again consider comprehensive tax administration legislation in 2019. The Purple Book is designed to assist the tax-writing committees in their efforts by offering a wide range of proposals in a concise, easy-to-read format.

TAS Research Studies and Literature Reviews

Volume two of the report presents research studies on the following topics:

1) The potential for a Pay-As-You-Earn (PAYE) withholding system to simplify and improve U.S. tax administration,
2) An assessment of how the IRS uses its Allowable Living Expense standards when determining a taxpayer's ability to pay,
3) An analysis of how taxpayers respond to the penalty for substantial understatement of tax,
4) An analysis of the impact IRS audits have on taxpayer attitudes and perceptions, as reflected in a national survey,
5) An assessment of the IRS's offer-in-compromise program for business taxpayers, and
6) A further analysis of the effectiveness of notices of federal tax lien and alternative IRS letters on individual tax debt resolution.

The report also contains a literature review on ways to improve IRS notices by taking into account psychological, cognitive, and behavioral science insights.

For more information about the report, go to:
www.TaxpayerAdvocate.irs.gov/2018AnnualReport