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Problems at the IRS in Attempting To Provide Service to Taxpayers

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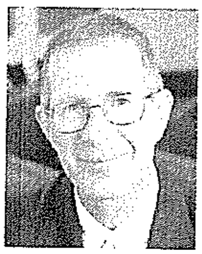
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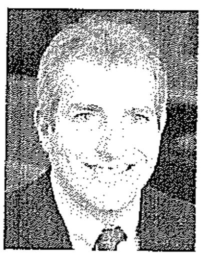
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In this article, Fogg and Book discuss the implications of the IRS's reduction in telephone service and face-to-face contact with taxpayers.

As we join efforts to comment on problems at the IRS, we look at two different parts. This article first addresses problems concerning the review of returns that seek benefits Congress has chosen to deliver through the tax code. We now have a few decades of experience with the use of the tax code to deliver benefits in the form of refundable credits, and it seems like we continue to cover the same ground as the IRS struggles to use its audit resources to deter the improper use of those credits while swiftly moving them into the hands of deserving individuals. The second part of this article addresses a problem created over 30 years ago, when the IRS sought to keep up with its growing inventory of collection cases. By gradually withdrawing its people presence among taxpayers and relying more and more on automated collection sites, the IRS may have retreated to the point of losing touch and opportunities.

In looking at the IRS's efforts in both administering benefit programs and collecting taxes, we suggest a more personal approach to tax administration. However, such an approach requires a Congress that is willing to appropriate funds to address the problem rather than merely summon the IRS leadership for hearings about what the agency does wrong.

Problems Using Tax System to Deliver Benefits

Although the individual income tax is still the workhorse of the tax system in terms of accounting for revenues,[1] over the past few decades Congress has fallen deeply in love with using the income tax system to deliver all sorts of benefits.[2] Some of those benefits have been short term (think first-time home buyer credit), while others seem here to stay — such as the earned income tax credit (added to the code in 1975) and the credits associated with the Affordable Care Act. Refundable credits are part of our brave new world in which Congress tasks the IRS with ensuring not only that the coffers are full but also that some Americans receive essential benefits through the tax system.

Observers of the IRS's administration of refundable credits and the EITC in particular have leveled one main criticism: The IRS has been unable to reduce stubbornly high error rates.[3] Congress has focused attention on this problem with many legislative initiatives, including unprecedented (for the tax system) penalties for improper claims, special due diligence rules for preparers submitting returns with specific refundable credits, and a reduction of

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[1]*See* Center on Budget and Policy Priorities, "Policy Basics: Where Do Federal Tax Revenues Come From?" (Mar. 11, 2015) (noting that almost 46 percent of federal revenue comes from the individual income tax).

[2]*See* Congressional Budget Office, "Refundable Tax Credits," at 1 (Jan. 2013); *see also* Michelle Lyon Drumbl, "Those Who Know, Those Who Don't, and Those Who Know Better: Balancing Complexity, Sophistication, and Accuracy on Tax Returns," 11 *Pitt. Tax Rev.* 113 (2013).

[3]The EITC has received the most attention. There are two main measures of EITC noncompliance: improper payments and overclaims. Improper payments are an annual measure of the amount of the credit erroneously claimed net of what the IRS recovers through enforcement. Overclaims do not reflect IRS enforcement actions. For a useful summary of the compliance problem with the EITC, see Margot L. Crandall-Hollick, "The Earned Income Tax Credit (EITC): Administrative and Compliance Challenges," Congressional Research Service (Jan. 22, 2015) (discussing how Treasury releases information on improper payments annually but the IRS has only periodically reported on gross overclaims, with the last overclaim studies being released in 1999 and 2014). The IRS estimates that in fiscal 2013, the improper payments ranged from 22 to 26 percent — that is, $13.3 billion to $15.6 billion annually. IRS Publication 5162, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* (Aug. 2014).

the pre-assessment right to judicial review of rejected returns claiming refundable credits. In this article, we shift our attention to the IRS's poor service to claimants, an issue both related to and distinct from error rates.[4]

We change the focus here because the research suggests that most Americans who claim refundable credits are compliant. To be sure, Congress and the IRS must consider ways to reduce the stubbornly high error rates, and we and others have discussed those efforts — including the possibility of additional oversight of the unlicensed return preparers who prepare a disproportionately high number of incorrect returns. But in designing approaches to reduce noncompliance, it is important to note that most tax return filers intend to file returns that accurately reflect their income, expenses, payments, and credits. Most Americans, either on their own or increasingly with the assistance of software or commercial preparers, navigate the filing season with few hiccups. For most, the return goes in through the cloud and a refund of excess withholdings or refundable credits comes out, increasingly through a direct deposit to a bank account.

Millions of Americans are not as lucky, however. Sometimes they do not understand the law, despite their best efforts. Sometimes they are missing key facts concerning their tax situation, perhaps as a result of a life disruption or a move. Sometimes they have received a letter from the IRS that they do not understand, including letters suggesting that a prior year's return was incorrect or missing some needed information. Some do not have a bank account and must rely on old-fashioned paper checks, which may involve high fees to convert a refund to cash.[5]

For all taxpayers, the IRS is in the customer service business. When it comes to service, key external variables undoubtedly influence how the IRS will perform in any filing season. Those include money and the timing of when Congress's law changes. Of course, resources are critical. The last few years have seen Congress cut IRS funding considerably, reducing it by 10 percent compared with fiscal 2010, even with a slight uptick in fiscal 2016 compared to fiscal 2015. Congress has also often made eleventh-hour legislative decisions that have affected the upcoming filing season.[6]

But focusing on budget issues and late-enacted legislation can dilute the importance of the IRS's establishing service goals based on the characteristics of the taxpayers for whom Congress expects it to manage various programs. Although Congress may not give the IRS as much money as it would like and may enact legislation that sends it scrambling to make forms and related information available, it is safe to say that the IRS has sufficient lead time to learn about the taxpayer characteristics likely associated with particular issues.[7] It is incumbent on the IRS to understand the taxpayer population as is, to know the characteristics of that population, and to build a tax system that meets the needs of those taxpayers — not a system equipped to serve taxpayers who have the resources to pay third parties, unfettered access to the Internet, and the necessary literacy levels to self-navigate a complex tax system.

A recent Government Accountability Office report on the 2015 filing season reflects deep dissatisfaction with the IRS's levels of service.[8] The report has lots of data, and we will not in this article refer extensively to the detailed findings (for those who want to be depressed about the state of our tax system, we encourage a reading). The report provides a useful listing of the ways the IRS interacts with taxpayers during the filing season in the following main areas:

- answering telephone calls;
- correspondence with taxpayers;
- delivering online services;
- face-to-face interactions; and
- return processing.

The IRS has significant room for improvement in all those areas. This article focuses on two of them: telephone calls and face-to-face interactions. The IRS reduced by over one-third the number of people answering telephone calls (assisters) between fiscal 2010 and fiscal 2015. Although the number of calls the IRS received decreased by about 6 percent over that five-year period (from roughly 54.3 million to 51.1 million), the reduction in assisters "contributed to the lowest level of telephone service in fiscal year 2015 compared to recent

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[4]For an excellent discussion of the administrative and legislative challenges associated with reducing the EITC error rate, as well as the nature of the compliance problem, see Crandall-Hollick, *supra* note 3.

[5]*See* Nina E. Olson, "National Taxpayer Advocate 2015 Annual Report to Congress," vol. 1, at ix (Dec. 31, 2015); and Chi Chi Wu and Michael Best, "Taxpayer Beware: Unregulated Tax Preparers and Tax-Time Financial Products Put Taxpayers at Risk," National Consumer Law Center (Mar. 2015) (referencing how more than 21 million taxpayers in 2014 paid $848 million in refund anticipation check and other assorted ancillary return preparation fees, in addition to sizable direct preparation fees).

[6]Government Accountability Office, "2015 Tax Filing Season: Deteriorating Taxpayer Service Underscores Need for a Comprehensive Strategy and Process Efficiencies," GAO-16-151 (2015), at 5-6.

[7]*See* Olson, *supra* note 5, at 235 (discussing characteristics of the population receiving the EITC with summary information).

[8]GAO, *supra* note 6.

years," according to the GAO. It reported that "the IRS answered about 50 percent fewer calls from taxpayers seeking an assistor during the same period, while about 73 percent more calls were abandoned, disconnected by IRS, or met with a busy signal (from about 32.4 million to 56.2 million)." Wait times increased substantially (almost tripling from 11 minutes in fiscal 2010 to 30 minutes in fiscal 2015), and only 38 percent of people who wanted to reach an assister were able to do so.

The GAO also painted a not-so-pretty picture when it came to face-to-face visits:

> As a result of budget cuts, IRS officials said IRS reduced staff devoted to face-to-face assistance at walk-in sites and directed customers to self-service options. IRS reduced staff at walk-in sites by about 4 percent in fiscal year 2015 compared to the previous year (from 1,938 to 1,867 [full-time equivalent employees]). However, the percentage of customers at walk-in sites waiting for longer than 30 minutes for service increased by 7 percentage points in fiscal year 2015 (from about 25 to 32 percent) during the same period.

To partially reflect the challenges the IRS believes it has in staffing walk-in sites, the agency has attempted to move much of its service to an online environment "by providing fewer forms, instructions, and publications at walk-in sites and encouraging taxpayers to get them online instead," the GAO observed. The reliance on volunteer walk-in sites through programs such as volunteer income tax assistance increased, with volunteer sites preparing about 3.8 million tax returns in fiscal 2015, up 3 percent from fiscal 2014.

Reducing telephone service and face-to-face contacts with taxpayers seems to be part of the IRS's long-term strategy. The 2015 national taxpayer advocate report to Congress discusses the broad outline of the IRS's "future state" plan to improve customer service. That plan, the taxpayer advocate notes, has the laudable goal of "creating online taxpayer accounts through which taxpayers will be able to obtain information and interact with the IRS."[9] A world in which taxpayers can seamlessly interact with the IRS to avoid problems before they file tax returns is a terrific idea in theory. Congress has been facilitating that idea by pushing up the deadlines for third parties to file information returns with the IRS, and there is little doubt that the agency can improve the return filing experience by enhancing access to taxpayer-related information it possesses.

However, the taxpayer advocate has raised two broad concerns with the IRS's future state plan: (1) it reflects a desire by the IRS to reduce resources for fielding phone calls and in-person service; and (2) it is likely that the IRS will rely on third parties such as preparers and return preparation software companies to deliver that information, resulting in increased compliance costs for taxpayers.[10]

Although this article focuses on issues raised by the IRS's decrease in phone and in-person service, we have deep concerns about additional costs that may be passed on to taxpayers. The national taxpayer advocate, through extensive third-party research, has indicated that the taxpayers who increasingly rely on the IRS to deliver needed benefits — especially lower-income taxpayers — are the very ones most likely to need to access the IRS in person or by telephone.[11]

If the IRS is trying to build a tax system that can deliver information and services to taxpayers, it must consider the characteristics of the taxpayers themselves rather than the characteristics it would like all taxpayers to share. The reality is that there is no single tax system today; rather, there are differing systems that correspond to the programs found within the tax code. Various programs such as the EITC have their own unique challenges that depend not only on the characteristics of the claimants but also on access to information that helps the IRS and the claimants determine eligibility for the programs.

An upcoming article by Leslie Book draws on the research of scholars who have examined the way other agencies interact with individuals who rely on them to deliver benefits, as well as the main reasons why they often provide inadequate service when delivering benefits.[12] One of the key insights in that article is that agencies perform many multiple tasks

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[9]Olson, *supra* note 5, at 3. Last month, the national taxpayer advocate sponsored a public forum on the IRS's future state plans, and she will be conducting forums on the issue in many cities this year. For a link to the testimony of me and the other witnesses who provided important perspectives at the inaugural hearing, see http://www.taxpayeradvocate.irs.gov/news/nta-forum-wdc. *See also* Book, "National Taxpayer Advocate Forum on Future State Highlights Challenges IRS Faces in Building A Modern Tax System," Procedurally Taxing (Mar. 4, 2016), *available at* http://www.procedurallytaxing.com/national-taxpayer-advocate-forum-on-future-state-highlights-challenges-irs-faces-in-building-a-modern-tax-system/.

[10]*See id.* at 3-14.

[11]*See id.* at 5-8; and Olson, "Procedural Justice for All: A Taxpayer Rights Analysis of IRS Earned Income Credit Compliance Strategy," in John Hasseldine (ed.), 22 *Advances in Taxation* 10 (2015).

[12]Book, "Bureaucratic Oppression and the Tax System," (69 *Tax Law.* ___ (coming 2016).

when delivering benefits.[13] Consider the following ways agencies generally interact with individuals receiving benefits and how those tasks might trigger demands on the IRS:

1. prospective claimants require some assistance in applying for the program;

2. someone must set eligibility criteria and procedures;

3. someone must determine whether each claimant meets those eligibility criteria and procedural requirements;

4. someone must keep records of those eligibility decisions;

5. someone must issue benefits to claimants found eligible;

6. someone must resolve disputes with claimants concerning eligibility and issuance; and

7. someone must review performance at each of these steps to protect the program's integrity.

As discussed in that article, the "someone" in most of those tasks is the IRS. In those areas, agencies make numerous policy and value choices. Agencies that tackle those tasks without a careful consideration of the qualities and characteristics of the very individuals they are charged with serving will likely fall short in meeting the needs of the public. The implication for the IRS goes beyond that of a specific failure to deliver quality service for a given taxpayer in a given year. The taxpayer advocate connects the IRS's shortcomings with the broader issue of procedural justice:

> "Procedural justice" (or fairness) is a concept that considers how a taxpayer is treated by the IRS. It looks to more than just the outcome of the interaction; it also considers if the interaction was "nonjudgmental, polite, and respectful of the individual's rights." Procedural justice is an important concept to consider when discussing EITC cases because a taxpayer's perception of procedural fairness will affect his or her perception of the agency's fairness and legitimacy, as well as his or her willingness to comply with the tax laws.[14]

With that in mind, as the IRS moves forward in modernizing its approach to delivering services to taxpayers, it should appreciate that not all taxpayers are alike and that those who come to rely increasingly on the tax system to meet essential needs will likely require more assistance. Efficiency is no doubt important, but a system that is efficient at not providing basic levels of service to those who need the most help is not a system that should be part of a 21st-century tax administration.

Problems at the IRS in Trying to Collect Taxes

Most taxpayers pay on time or even overwithhold through their payroll system. When taxpayers do not pay on time, the IRS must take affirmative steps to collect the unpaid tax. Like most other parts of the IRS, the collection division suffers from underfunding and inadequate training. The underfunding has created large gaps in the hiring of new collection personnel over the past several years. The lack of consistent hiring and training leads to gaps in leadership and will put enormous pressure on training when the IRS finally gets to replenish its ranks. Even more important, however, is the potential loss of citizens' faith in the system — not only the faith of citizens from whom the IRS must collect but also that of citizens from whom it does not need to take enforced collection measures because of their ongoing compliance.

Today's collection division places much less judgment in the hands of the persons who collect taxes and in most cases has removed those people from the communities in which the taxpayers live. Until 1980, revenue officers played the primary role in collecting taxes. They existed in field offices throughout the United States. Together with revenue representatives who staffed the walk-in field offices, revenue officers formed the backbone of the IRS's collection efforts. Because of their integration in the local community, they served as a visible IRS presence and acted like cops on the beat. With the changes in the role of government brought about by President Reagan, the IRS basically stopped hiring revenue officers and revenue representatives in sufficient numbers to replace those leaving and to keep up with increasing workloads. There came a point at which revenue officers carried so many cases in their inventory that they had only enough time to monitor statutes of limitation and put out fires. They did not have enough time to work most of the cases in their inventory.

Because the government did not want to hire more tax collectors and because the system of assigning revenue officers a pro rata share of the delinquent inventory created an unworkable situation, the IRS explored solutions and found one in the creation of the Automated Collection System

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[13]The insight and the list of tasks itself derive from David A. Super's article considering the relative roles of the private and public sectors in the delivery of benefits to the poor. Super, "Privatization, Policy Paralysis, and the Poor," 96 *Cal. L. Rev.* 393 (2008). An upcoming National Tax Association-American Tax Policy Institute conference this spring will directly consider the increasing role of the private sector in tax administration, including in the context of refundable credits.

[14]Olson, "Procedural Justice for All," *supra* note 11, at 10.

(ACS).[15] ACS was consistent with other solutions the IRS found in automation.[16] It took pressure off the revenue officers, allowing them to focus on the cases with the greatest problems and carry a manageable inventory of cases. At about the same time, the IRS created the Queue — a place where it could shelve cases in which the current collection potential did not warrant attention.[17] With the safety valves of ACS and the Queue, IRS executives no longer had to lose sleep wondering how to cover all the cases in the agency's burgeoning inventory. They also lost the ability, or at least the incentive, to press to maintain the cadre of revenue officers and revenue representatives at the level that existed when ACS and the Queue were created, even though those programs came into existence not because the work of the revenue officers lost importance but because the pace of hiring them failed to keep up with the inventory of cases.

In the early 1990s, Congress *sua sponte* increased the collection statute of limitations from six to 10 years. Sounds like a great idea — until you examine the amount of money collected in the out years. If the IRS cannot collect the money in the first two years, its chances of ever collecting it plummets to about 15 percent.[18] So, although Congress may have thought that it created a solution to the IRS's failure to hire people to collect on delinquent accounts, the extended statute of limitations actually put even more pressure on the collection division because its uncollected inventory was now shown as almost twice what it was before 1990, thus causing even more scrutiny of the IRS's failure to collect the tax.

In response to this, the IRS created the offer in compromise program.[19] While the agency's legal authority to compromise can be traced to the 1860s, as a practical matter, it compromised on tax debts only in extremely rare circumstances.[20] The addition of the OIC program, too, placed additional pressure on the IRS collection division. These cases were initially assigned to revenue officers to resolve, and the officers had little or no guidance on what to accept. Over time the IRS has moved this program out of the hands of revenue officers and into the hands of offer specialists. Those specialists have significantly more guidance on what to consider than did the revenue officers in the early 1990s, but the resources devoted to the OIC program further diluted the resources available to hire revenue officers.

Meanwhile, Congress began paying a lot of attention to all the problems the IRS had collecting taxes and to all the complaints taxpayers were lodging about the IRS. It does not seem coincidental that the complaints that led to legislative efforts escalated to the point of spurring Congress to action within a reasonably short time after the IRS introduced ACS and moved away from local collection officials. In 1988, 1996, and 1998, Congress enacted taxpayer bill of rights legislation primarily targeting the collection division.[21] Some of that legislation provided long-needed relief for problems created by the tax system, but almost all the provisions established new rules by which IRS collectors had to play. This, in turn, further reduced their efficiency. As all these changes occurred, no one seemed to ask whether the collection division could have avoided much of the scrutiny and problems if it had received adequate staffing and training or had left in place the same number of revenue officers and revenue representatives.

Rather than constantly failing to fund the collection division and then criticizing it for failing to provide world-class service, we should take a step back and look at what collection system would work best for the United States, including for the people who always pay and those who do not. Rather than sliding into a world where more and

[15]GAO, "Computer Technology at IRS: Present and Planned," GAO-83-103 (1983), at 127. Of all cases sent for collection, 70 percent are routed to ACS. *See* GAO, "IRS Case Selection: Automated Collection System Lacks Key Internal Controls Needed to Ensure the Program Fulfills Its Mission," GAO-15-744 Sept. 2015), at 12-13. *See also* Internal Revenue Manual section 5.19.5.2, "What is ACS?" (Aug. 20, 2013). The 2015 GAO report offers an overview of the ACS function. *See* GAO-15-744, *supra*, at 38.

[16]*See* Bryan Camp, "Theory and Practices in Tax Administration," 29 *Va. Tax Rev.* 227 (2009).

[17]IRM section 5.3.1, "ENTITY Case Management System (ENTITY)" (Aug. 13, 2013).

[18]*See* Olson, "National Taxpayer Advocate 2015 Annual Report to Congress," vol. 2, at 33-66 (Dec. 31, 2015).

[19]*See generally* Joseph Dugan, "Compromising Compliance? The IRS Offer in Compromise Program and Opportunities for Reform" (Jan. 31, 2016), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2725480.

[20]Recent legislative history of section 7122: Internal Revenue Code of 1954, ch. 736; Tax Reform Act of 1976, P.L. 94-455, Title XIX, section 1906(b)(13)(A); Taxpayer Bill of Rights 2, P.L. 104-168, Title V, section 503(a) (1996); Internal Revenue Service Restructuring and Reform Act of 1998, P.L. 105-206, Title III, section 3462(a) and (c)(1); Tax Increase Prevention and Reconciliation Act of 2005, P.L. 109-222, Title V, section 509(a) and (b); Tax Relief and Health Care Act of 2006, P.L. 109-432, div. A, Title IV, section 407(d); and Tax Increase Prevention Act of 2014, P.L. 113-295, div. A, Title II, section 220(y).

[21]The first TBOR was part of the Technical and Miscellaneous Revenue Act of 1988, P.L. 100-647. The second TBOR was a stand-alone measure. TBOR 2, P.L. 104-168. The final piece of legislation in this trilogy, and the most important, was the Internal Revenue Service Restructuring and Reform Act of 1998, H.R. 2676, 105th Cong., 2d Sess., section 1002, P.L. 105-206.

more cases move to ACS and the Queue without thinking about the consequences, we need to consider systems and laws that would allow the IRS to operate efficiently in collecting taxes. We want all taxpayers to pay their taxes and to do so as painlessly as possible. By removing IRS personnel from localities around the country — individuals who understand the community and want to make it work — we have created a collection system in which the person in Boston who needs to pay his taxes talks to an ACS site worker in Fresno, California, with no understanding of the taxpayer's community and little time for empathy and understanding. Let's work to restore revenue officers and collection walk-in sites to our communities so that taxpayers with a problem can find answers in a knowledgeable and accessible local resource. We still need ACS and the Queue for some cases, but we also need humans who reside among us and can relate to the issues facing their neighbors.

Conclusion

In reading about the challenges the IRS faces, a common theme emerges: The IRS needs to know who it is serving. That applies whether the IRS is helping ensure taxpayers meet their filing responsibilities, trying to request information in an audit, or collecting an assessed liability. The efficiency gains the IRS is making (or has been forced to make in light of budget cuts) come with serious costs, especially for taxpayers who are unequipped to manage on their own or who lack the resources to delegate those responsibilities. Over time, continued levels of poor service not only place the interests of taxpayers at risk but also have the potential to undermine respect for and confidence in the tax system.

It is not easy to administer a tax system in any country. Add into the mix a country as diverse as ours with a tax system that serves multiple functions, and you have a system that needs constant care and attention just to perform at an adequate level.

The last few years have been very difficult for the IRS, whether performance is measured in statistics or qualitatively. It is time for both the IRS and Congress to explicitly recognize the agency's role in administering and delivering benefits. Congress and the IRS have come a long way through last year's legislative adoption of a formal TBOR.[22] The adoption of rights without a concomitant appreciation and recognition of the administrative challenges that the IRS faces in implementing those rights can render them more illusory than real. As the IRS hopefully moves away from the crisis mode of the past few years, it will have to smartly dedicate resources to address its many challenges. In all instances, that effort requires a careful consideration of the sources of its problems as well as how proposed solutions mesh with the very taxpayers it is required to serve.

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[22]Consolidated Appropriations Act, 2016, P.L. 114-113, section 401 (2015).