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Jun. 20, 2019



National Taxpayer Advocate Nina E. Olson today released her 37th and [final report to Congress](#) in advance of her previously announced retirement on July 31. In the preface, Olson reflects on her 18 years in the job and provides her assessment of the key challenges facing the IRS and the Taxpayer Advocate Service (TAS) in the coming years. The report also presents a review of the 2019 filing season.

“I am enormously grateful for the opportunity I have had to advocate on behalf of our nation’s taxpayers,” Olson wrote. “Amazingly, despite the challenges of complying with our multi-million-word tax code, more than 150 million individual taxpayers and more than 10 million business entities do their civic duty every year by

filing income tax returns with the IRS. That is an extraordinary achievement and one

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be the work of TAS.”

Key IRS Challenges

Taxpayer Service. The report says poor taxpayer service remains the biggest challenge taxpayers face in dealing with the IRS. As one example, IRS telephone assistors during the recent filing season answered just 25 percent of taxpayer calls enterprise-wide, and hold times for taxpayers who got through averaged 13 minutes.

The report points out that the President’s Management Agenda for 2018 emphasized the importance of high-quality customer service. It said: “Federal customers . . . deserve a customer experience that compares to – or exceeds – that of leading private sector organizations,” and it cited data from the American Customer Satisfaction Index (ACSI) and the Forrester U.S. Federal Customer Experience Index as key benchmarks.

Those indices show the IRS performs poorly relative to both private sector organizations and other federal agencies. The ACSI report for 2018 ranks the Treasury Department tied for 10th out of 12 Federal Departments and says that “most [IRS] programs score . . . well below both the economy-wide national ACSI average and the federal government average.” Similarly, the 2019 Forrester report ranks the IRS 13th out of 15 federal agencies and characterizes the IRS’s customer experience score as “very poor.”

The National Taxpayer Advocate’s report says the IRS is not taking adequate steps to address its service shortcomings. While the Administration’s budget proposal for fiscal year (FY) 2020 requested an increase of 5.0 percent for enforcement, it requested a decrease of 6.6 percent in taxpayer services funding.

“This approach is tantamount to robbing Peter to pay Paul,” Olson wrote. “There is

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the IRS established the “Enterprise Self-Assistance Participation Rate” as one of its principal measures of taxpayer service. According to the IRS, “[t]his measures the percent of instances where a taxpayer uses one of the IRS’s self-assistance service channels (i.e., automated calls, web services) versus needing support from an IRS employee (i.e., face-to-face, over the phone, via paper correspondence).”

The National Taxpayer Advocate’s report cites survey data from Forrester Research and a separate survey recently published in the Harvard Business Review that, in combination, indicate customers who use the Internet are comfortable with self-assistance for some categories of interactions but prefer personal contact (by phone or in person) for others, particularly those that involve uncertainty and complex decision-making known to provoke anxiety.

“Applying these findings to the IRS, with its awesome investigation, audit, and collection powers,” Olson wrote, “it is clear that every interaction with the agency has the potential to be anxiety-inducing. This observation has led me to develop what I call the *Taxpayer Anxiety Index* as a methodology for analyzing how the IRS should structure its interactions with the taxpayer. Simply put, *as the anxiety-inducing capacity of a given interaction increases, so should the taxpayer’s access to person-to-person interaction.*”

The National Taxpayer Advocate’s 2018 Annual Report to Congress contained “roadmaps” that pinpoint the stages of a taxpayer’s “journey” through the tax system. Using the roadmaps, today’s report says, “we can easily identify where the taxpayer’s anxiety increases and human intervention is warranted. For example, in our Return Processing Roadmap, if a taxpayer’s refund return gets bogged down in Identity Theft processes or in the pre-refund wage verification program, these delays cause anxiety. Where the taxpayer’s refund gets stopped for multiple delays, anxiety skyrockets.”

The report urges the IRS to use the “Taxpayer Anxiety Index” concept to determine

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to compromise a tax debt.

However, the IRS generally does not assess whether there is economic hardship unless and until the taxpayer asks it to do so. In particular, it does not attempt to determine whether a taxpayer is experiencing an economic hardship before accepting full-pay installment agreements or serving levies. As a result, the report says, taxpayers entered into about 2.1 million streamlined installment agreements in FY 2018, and about 40 percent of those taxpayers had incomes at or below their Allowable Living Expenses. The default rate for those taxpayers was 39 percent – about seven times the default rate for taxpayers with higher incomes.

“[T]he IRS collection system favors knowledgeable taxpayers who understand how to request collection alternatives and, at least in relative terms, discriminates against taxpayers who don’t have that knowledge,” Olson wrote. “That is not the way a fair tax system should work, and it needs to change.”

The report makes two recommendations. First, it recommends that the IRS create an algorithm based on its internal data (tax returns, Forms W-2, and Forms 1099) to identify taxpayers at risk of economic hardship; then, if a taxpayer so identified calls the IRS or seeks to enter into an online installment agreement, the IRS could use that data to trigger a “pop-up” screen noting the possibility of economic hardship and providing information about collection alternatives. Second, the report recommends the IRS send a letter describing collection alternatives to taxpayers who its data show are at risk of economic hardship before it levies against their property. “A clear letter would go a long way toward leveling the playing field by providing the same information to all affected taxpayers,” the report says.

Filing Season Review

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minutes. Part of the decline is likely attributable to the partial government shutdown.

The report says the IRS utilizes narrow performance measures that suggest the agency is performing well but do not reflect the taxpayer experience.

Notwithstanding the IRS benchmark measure showing an LOS of 67 percent on its Accounts Management lines, IRS telephone assistors answered only 23 percent of calls received. For taxpayers calling the compliance telephone lines (which are separate from the Accounts Management lines), performance was worse. The LOS on the various Automated Collection System lines was 33 percent, and the average hold time was 41 minutes.

TAS Priority Issues for FY 2020

The report identifies and discusses 12 priority issues TAS plans to focus on during the upcoming fiscal year. Among the key issues are the following:

1. **Creation and Online Availability of a Roadmap of Tax Controversies.** The National Taxpayer Advocate's 2018 Annual Report to Congress included a series of "roadmaps" depicting a taxpayer's "journey" through the tax system, including seven stages: (i) tax return preparation; (ii) tax return processing; (iii) notices; (iv) examinations; (v) appeals; (vi) collection; and (vii) litigation. The purpose was to help taxpayers gain a better understanding of the tax administration process, particularly when they are experiencing problems. Since publication of the 2018 report, TAS has continued to develop ways to represent the taxpayer's journey visually by placing the stages in the format of a metro or subway map. The map is expected to be released next month.

Because of the complexity and number of steps at each stage, the original roadmaps simplified certain processes by omitting multiple sub-steps and detours that in some

situations can be significant. To provide a more complete picture, TAS will be

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Benefits. As part of the Tax Cuts and Jobs Act (TCJA), Congress imposed a requirement that taxpayers include a Social Security number (SSN) for every qualifying child for whom they claim the Child Tax Credit (CTC). The requirement is intended to block claims by taxpayers whose children do not qualify for SSNs. However, the requirement has also created a conflict with the religious beliefs of the Amish and certain other religious groups. In some cases, religious beliefs prohibit taxpayers from accepting government benefits. As a result, many individuals in the Amish community refrain from accepting Social Security benefits and from obtaining SSNs. The IRS has taken the position that it will not allow full CTC benefits for these taxpayers.

Prior to the enactment of the SSN requirement, the IRS utilized a procedure that allowed Amish taxpayers to claim the CTC without placing an identifying number on the dependent line of their returns. Since the enactment of the TCJA SSN requirement, the IRS has created an exception for children who are born and die in the same or consecutive years and thus do not receive SSNs but may be claimed for CTC purposes. Yet the IRS has declined to create an exception for Amish taxpayers. The report summarizes relevant provisions of the Religious Freedom Restoration Act and key U.S. Supreme Court decisions establishing the circumstances in which the government must create exceptions to laws of general applicability to accommodate the free exercise of religion.

In general, the courts subject laws that burden the free exercise of religion to a strict scrutiny test, allowing burdensome provisions to stand only if the government can demonstrate that the application of the burden to a person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest. The report argues that barring the Amish from receiving the CTC is not the least restrictive means available because the IRS had previously developed and applied procedures to allow them to receive benefits

without an SSN. It also points out that the parents of children who are born and die

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report next month. The first will contain the IRS's general responses to each of the administrative recommendations the Advocate proposed in her 2018 Annual Report to Congress as well as its specific response to each recommendation. The volume will also contain TAS's analysis of the IRS's responses and, in some cases, will detail TAS's disagreement with the IRS's position.

The second additional volume will contain a comprehensive assessment of the Earned Income Tax Credit (EITC) and will make recommendations designed to increase the participation rate of eligible taxpayers and reduce overclaims by ineligible taxpayers. During the spring, Professor Leslie Book of the Villanova School of Law, a leading EITC expert, served as a "professor in residence" with TAS, and Margot Crandall-Hollick, an EITC expert with the Congressional Research Service, worked with TAS on a detail. Together with TAS's EITC experts and research staff, they conducted a broad review of existing EITC research and drafted a comprehensive set of recommendations to assist Congress and the IRS in improving the program.

In addition, the National Taxpayer Advocate plans to publish the metro/subway map depicting a taxpayer's "journey" through the tax system in July both in digital form and in hard copy.

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