



April 7, 2022

The Honorable Ron Wyden  
Chair, Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Mike Crapo  
Ranking Member, Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chair Wyden, Ranking Member Crapo, and Members of the Committee:

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, we write in regards to your hearing with IRS Commissioner Rettig on the agency's fiscal year (FY) 2023 budget request. NTU and its research arm NTU Foundation have been actively engaged on IRS budget and reform matters since our founding in 1969, and our experts and advocates have been especially involved of late in the challenges facing the agency during the 2022 tax filing season.

In recent years, NTU and NTU Foundation have often weighed in on efforts to increase the IRS budget. While we continue to believe that it would be a serious mistake to provide the agency \$80 billion over 10 years almost exclusively for enforcement purposes – and that such a proposal would represent a nearly blank check to an agency with serious structural flaws and long-term challenges – we have expressed our support for Congressional efforts aimed at improving customer service and modernizing the agency's infrastructure. We believe that resources properly directed to these ends should aim to be fully offset by spending reductions elsewhere in the federal budget, and we believe that any IRS budget increases should come with solidly-grounded guardrails, robust Congressional oversight, and strong taxpayer rights and privacy protections.

### **The IRS FY 2023 Budget Request**

As you well know, the agency's FY 2023 budget request would increase spending by \$1.5 billion, or 11.9 percent, above FY 2022 enacted levels.<sup>1</sup> The Taxpayer Service Account would see the largest increase under the budget proposal: \$904 million or 32.5 percent above FY 2022 enacted levels. The Enforcement Account would see an \$834 million increase, or 15.3 percent above enacted levels. The Business Systems Modernization Account would see a \$35 million, or 12.7 percent increase, over FY 2022 enacted levels.

NTU and NTU Foundation are still evaluating the agency's full FY 2023 budget request, and we look forward to hearing from Commissioner Rettig at the Committee's April 7 budget hearing. However, we urge the IRS and the Committee to explore reforms that 1) advance taxpayer rights and privacy, 2) improve customer service at the agency, 3) modernize the IRS, and 4) help the agency enforce the nation's tax laws while fully respecting taxpayer rights and due process.

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<sup>1</sup> For more, see: Office of Management and Budget. "INTERNAL REVENUE SERVICE." March 2022. Retrieved from: [https://www.whitehouse.gov/wp-content/uploads/2022/03/tre\\_fy2023.pdf#page=40](https://www.whitehouse.gov/wp-content/uploads/2022/03/tre_fy2023.pdf#page=40) (Accessed April 5, 2022.); Congress.gov. (Introduced April 13, 2021.) "H.R.2471 - Consolidated Appropriations Act, 2022." Retrieved from: <https://www.congress.gov/bill/117th-congress/house-bill/2471/text> (Accessed April 5, 2022.)

## Protecting Taxpayer Rights and Privacy

Taxpayer rights – including the right to due process and the right to relief when the agency makes an error that affects the taxpayer – are of the utmost importance and have traditionally enjoyed bipartisan support on Capitol Hill. However, between concerns about the agency’s proposed (but since canceled) use of facial recognition technology, and the *ProPublica* breach of sensitive tax data, it is clear the agency is not as prepared to protect taxpayer privacy and safeguard taxpayer rights as the nation’s taxpayers should expect. The following recommendations may, over the long run, right the ship at the IRS.

- **Pass Additional Taxpayer Protections Through a New Taxpayer Bill of Rights (TBOR)** : NTU has endorsed legislation from Sen. John Cornyn (R-TX), the Small Business Taxpayer Bill of Rights, which would create an alternative dispute resolution program for audits, give the IRS greater latitude to release levies that cause financial hardship, and strengthen safeguards against taxpayer abuses by IRS officers and agents, among other commendable provisions.<sup>2</sup> These and similar reforms should receive bipartisan support in Congress, either as part of the appropriations process or as standalone legislation.
- **Safeguard Taxpayer Privacy From Unauthorized Attempts to Access Data** : Targeted budget increases that improve the agency’s information technology (IT) infrastructure and data security could prevent harmful and embarrassing data breaches like the *ProPublica* series on high-income filers’ tax returns. As NTU Foundation has noted, “A 2020 report by the Treasury Inspector General for Tax Administration looked at 67 requests for taxpayer data that should have been monitored for unauthorized access. Of these, just 6 received adequate scrutiny — 30 received inaccurate and incomplete audit trails, and 31 received no audit trails at all.”<sup>3</sup>
- **Require the Agency to Reduce its Response Time for Resolving ID Theft Claims** : The agency is currently taking nearly a year to resolve identity theft claims, a significant increase from their average response time “due to extenuating circumstances.”<sup>4</sup> However, outside of extenuating circumstances, the agency’s average response time is 120 days. Taking four months to a year to respond to identity theft claims is unacceptable, and the agency should work with Congress to reduce the average response time to identity theft claims. If this requires a targeted funding increase, so that the agency may hire more personnel to respond to identity theft claims, Congress should carefully consider such a request.
- **Evaluate and Remediate Problems with Current Taxpayer Rights Laws.** Both practitioners and the taxpayers they represent have raised concerns that the Independent Office of Appeals created by the Taxpayer First Act of 2019 is under-resourced, and that agency guidance released subsequent to the law’s enactment may be limiting taxpayer access to this critical avenue of redress. At the same time, the tripartite accountability structure of the National Taxpayer Advocate, Treasury Inspector General for Tax Administration, and IRS Oversight Board has been tottering because the latter element has not had a quorum to function for many years. These are but two examples where Congress needs to step in and affirm or even strengthen its intent to provide more safeguards for taxpayers.

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<sup>2</sup> Sepp, Pete; and Lutz, Andrew. “Senate Bill Would Provide Small Business Taxpayers With New Rights.” NTU, May 17, 2021.

Retrieved from: <https://www.ntu.org/publications/detail/senate-bill-would-provide-small-business-taxpayers-with-new-rights>

<sup>3</sup> Wilford, Andrew; Sepp, Pete; and Bishop-Henchman, Joe. “Taxpayers Desperately Need Help with Disastrous Filing Season.” NTU Foundation, February 17, 2022. Retrieved from:

<https://www.ntu.org/foundation/detail/taxpayers-desperately-need-help-with-disastrous-filing-season>

<sup>4</sup> Internal Revenue Service. “IRS Operations During COVID-19: Mission-critical functions continue.” Updated March 18, 2022.

Retrieved from: <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (Accessed April 6, 2022.)

## Improving Customer Service at the Agency

One area of the IRS budget where additional funding may be required is customer service. Taxpayers currently experience long wait times to reach an IRS agent with questions or concerns about their tax return, if they can even reach a real agency representative at all. While some IRS customer service struggles are no doubt tied to the agency's slow pace at modernization and its resource constraints, some are unique to this tax filing season and the challenges of the COVID-19 pandemic. Congress can step in with several reforms, outlined below. In some cases, emergency funding directed at the agency's short-term obstacles may be necessary.

- **Expand Funding for Taxpayer Services:** Narrowly-tailored funding increases – targeted at, for example, hiring more customer service representatives to answer taxpayer questions or hiring more agents to reduce the agency's return backlog – could benefit both taxpayers and the agency as they face a difficult 2022 filing season. NTU Foundation noted in February, “[p]roviding the agency with emergency funding earmarked for the taxpayer services account would at least reduce the problems that taxpayers are likely to face over the coming months.”<sup>5</sup>
- **Ensure That Taxpayers Are Not Punished for IRS Delays:** NTU and NTU Foundation have been leaders in demanding the IRS and/or Congress provide taxpayers with immediate relief for delays that are no fault of their own. A bipartisan group of lawmakers have made similar demands, indicating support across the ideological spectrum for immediate taxpayer relief this filing season. Lawmakers' demands have included “that the IRS halt late fees and penalties for taxpayers who have paid 70 percent of assessed tax liability and have pending penalty abatement requests waiting to be processed. [Demands also include] halting automated collections until three months after the end of this tax season, and temporarily speeding up the reasonable cause penalty abatement process by eliminating the need for written correspondence.”<sup>6</sup>
- **Provide a Legislative Fix to “One Day Late” Dispute:** One area where Congress can step in is for taxpayers who have been harmed by the current IRS position that “any taxpayer who fails to file an appeal within 30 days forfeits all rights to go to Tax Court.” As NTU Foundation has written, “The IRS concedes that 26 U.S.C. § 6330(d)(1) allows taxpayers to go to Tax Court, but they argue that a parenthetical reference to ‘such matter’ instead of ‘such determination’ means that Congress intended to forbid judges from granting equitable relief to taxpayers who miss the deadline. This harsh reading is at odds with the rest of the 1998 law, with common law equitable doctrines, and other provisions in the same statute.”<sup>7</sup> Congress could clarify the statute so that judges may grant relief to taxpayers who miss the deadline.
- **Apply a Consistent Mailbox Rule Deadline to Electronically Submitted Payments:** According to NTU Foundation, “Taxpayers who mail checks to the IRS can utilize the ‘mailbox rule’ of 26 U.S.C. § 7502, which treats paper payments as timely if mailed with a postmark before the deadline. By contrast, the Treasury Department's Electronic Federal Tax Payment System (EFTPS) states that electronic payments must be made by 8:00 PM Eastern Time the day before the deadline in order to be timely.”<sup>8</sup> These uneven rules effectively punish taxpayers trying to file electronically, and Congress should amend the law to equalize the electronic filing rules with the current “mailbox rule” for paper returns.
- **Increase Interest Rate for Delayed Refunds:** NTU Foundation's February paper also recommended increasing the three-percent interest rate on tax refunds, amid significant IRS processing delays and historic levels of inflation that exceed three percent.<sup>9</sup>

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<sup>5</sup> Wilford, Andrew; Sepp, Pete; and Bishop-Henchman, Joe. “Taxpayers Desperately Need Help with Disastrous Filing Season.” NTU Foundation, February 17, 2022. Retrieved from:

<https://www.ntu.org/foundation/detail/taxpayers-desperately-need-help-with-disastrous-filing-season>

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

- **Raise the 1099-K Reporting Threshold:** NTU Foundation has written extensively on the need for Congress to raise the reporting threshold for 1099-K forms, which Congress recently changed from 200 transactions and \$20,000 on web platforms to just \$600. The new \$600 threshold is a burden to online sales platforms, digital economy apps, and millions of workers across the country. While NTU would prefer that Congress revert to the \$20,000 and 200-transaction thresholds, there are bipartisan proposals to raise the threshold above the current \$600 level, including to \$5,000.<sup>10</sup>

## **Modernizing the IRS**

As NTU Foundation wrote in February of this year, IRS technology and infrastructure are in many cases woefully inadequate and outdated.<sup>11</sup> NTU and NTU Foundation have compiled numerous recommendations to hasten the pace of the agency’s modernization efforts. We recognize that narrowly-tailored funding increases, relative to the agency’s current baseline, may be necessary to facilitate more rapid modernization. However, if expanding IRS electronic filing options, for example, or updating years- or sometimes decades-old infrastructure improves the agency’s ability to answer taxpayer questions and deliver tax refunds, the benefits of such targeted funding increases may outweigh the short-term costs to taxpayers.

- **Promote Increased Digitization of Tax Filing and Processing:** As NTU Foundation wrote in February, “A good number of ... paper filings occur because the IRS does not accept certain forms in digital format. Even among those that have been recently converted, some are still manually processed, such as Form 1040-X, or amended individual returns. If the IRS had the capability to automatically process the 3.6 million Forms 1040-X it received in 2021, it would significantly cut down on processing delays.”<sup>12</sup> Congress and the agency should prioritize electronic filing and processing for all or nearly all tax forms.
- **Promote Improved Digital Communications Tools:** NTU Foundation also recommended in February that the IRS “expand the use of virtual assistants” and increase the use of “existing secure digital communications tools” that allow taxpayers to contact the agency through email, text chat, and digital attachment uploads. Such efforts could reduce the amount of phone calls taxpayers make to the agency, reducing wait times for those taxpayers, resolving their questions or concerns faster, and putting less of a burden on the agency’s workforce in the process.

## **Enforcing the Nation’s Tax Laws**

NTU remains strongly opposed to efforts to send the IRS \$80 billion largely for enforcement purposes. The agency is ill-equipped to handle its basic customer service, processing, and data security responsibilities, much less an \$80 billion bucket of cash aimed at generating revenue to pay for a variety of new federal spending programs. However, the tax gap remains a relevant concern for the agency and for taxpayers, and both Congress and the IRS should explore measures to reduce the tax gap that nonetheless respect taxpayer rights and privacy. NTU outlines a few possible paths forward below. We would remind lawmakers that the IRS’s mission statement, which was given a great deal of forethought in its development some 25 years ago, is to “provide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.” Fulfilling this mission first can actually help, not hinder, the IRS’s functions of law enforcement,

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<sup>10</sup> Yopez, Will. “Bipartisan Focus on 1099-K Reporting Issue Will Hopefully Lead to Taxpayer Relief.” NTU, March 18, 2022. Retrieved from:

<https://www.ntu.org/publications/detail/bipartisan-focus-on-1099-k-reporting-issue-will-hopefully-lead-to-taxpayer-relief>

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

which continue to rely heavily on voluntary compliance. Above all, the agency should move slowly on reducing the tax gap – starting with more up-to-date estimates of the current tax gap – and Congress should not see tax gap reduction as consequence-free revenue to pay for new or expanded government programs.

- **Demand an Updated Study From the IRS on the Tax Gap:** The last tax gap estimate from the IRS, completed nearly three years ago, covers tax years 2011-2013 -- nine to 11 years ago. Though the IRS is reportedly working on a 2022 study for tax years 2014 through 2016, and though data lag continues to be an issue in providing up-to-date estimates of the tax gap, Congress should require a more robust analysis from the IRS of the present-day tax-gap estimated using new IRS methodologies referenced by an official in 2021 testimony to the Senate Finance Committee.<sup>13</sup>
- **Require an IRS Plan for Reducing the Tax Gap for Nonfarm Proprietor Income:** According to the most recent IRS study of the tax gap, the single largest component of the gap is underreporting of non-farm proprietor income -- a total of \$68 billion, or more than 15 percent of the estimated gross tax gap.<sup>14</sup> The agency should have a detailed plan for reducing this gap in particular.<sup>15</sup> That action plan should include steps to protect the due process rights of small businesses who report income on individual returns (so-called “pass-through income”). Another useful element of such a plan would be to compare the cost-effectiveness of alternative strategies for closing this gap. For example, would creation of an administrative quadrennial simplification process for tax law affecting small business, along with more resources to promulgate advance guidance, yield better compliance (and revenue) than relying more heavily on examinations and investigations? Such research is not beyond the capabilities of IRS technical experts.

In conclusion, the IRS faces significant short-term challenges with the 2022 tax filing season, and long-term challenges related to the agency’s structural flaws and outdated infrastructure. A pot of cash for tax law enforcement will not improve customer service and data security at the agency, nor are we convinced that the agency’s FY 2023 budget request meets all of the above challenges outlined by NTU, NTU Foundation, and other stakeholders in the taxpayer advocate community. Congress should carefully consider requests from the agency to increase budgets in various accounts, but should also insist that any budget increases are fully offset and come with robust reforms aimed at solving the agency’s long-term struggles. We appreciate your consideration of our recommendations, and should you have any questions we are at your service.

Sincerely,

Pete Sepp, President, National Taxpayers Union

Andrew Lautz, Director of Federal Policy, National Taxpayers Union

CC: Members of the Senate Committee on Finance  
The Honorable Charles P. Rettig, Commissioner, Internal Revenue Service  
The Honorable Janet Yellen, Secretary, United States Treasury

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<sup>13</sup> Senate Committee on Finance. “Written Testimony of Internal Revenue Service Before the Senate Finance Committee Subcommittee on Taxation and IRS Oversight on the Tax Gap.” May 11, 2021. Retrieved from: <https://www.finance.senate.gov/imo/media/doc/2021%20Donnell%20Johnson%20Tax%20Gap%20Written%20Testimony%20SFC%20051121.pdf> (Accessed April 6, 2022.)

<sup>14</sup> Internal Revenue Service. “Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2011–2013.” September 2019. Retrieved from: <https://www.irs.gov/pub/irs-pdf/p1415.pdf> (Accessed April 6, 2022.)

<sup>15</sup> For more, see: Sepp, Pete; and Lautz, Andrew. “Senate Bill Would Provide Small Business Taxpayers With New Rights.” NTU, May 17, 2021. Retrieved from: <https://www.ntu.org/publications/detail/senate-bill-would-provide-small-business-taxpayers-with-new-rights>