March 28, 2025

The Honorable Scott Bessent
Secretary, U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Bessent:

We, the undersigned free-market, pro-taxpayer organizations, urge you to address several matters that will improve the administration of the U.S. tax system in the near term. Although key positions remain to be filled both at Treasury and at the Internal Revenue Service, you have several opportunities to enact positive changes that are well within your authority. Accordingly, we respectfully offer the following recommendations.

- **Repeal Last-Minute Rulemakings and Continue Rigorous Cost-Benefit Analysis of the Current Regulatory Workload.** In the final weeks of the Biden Administration, numerous tax rulemakings, some of which sat open for years, were rushed to finalization. In the IRS realm, these include regulations affecting cryptocurrency transactions, supervisor approval for penalties, partnership basis transactions, captive insurance arrangements for small businesses, and taxpayer access to the Independent Office of Appeals.[1] Other problematic rules, such as Circular 230 proposals affecting preparers and appraisers, are not yet finalized.[2] These edicts are often characterized by cumbersome, unworkable strictures on economic sectors the IRS did not understand, unnecessary compliance burdens on the public, depredations on taxpayers' rights, and outright defiance of congressional statutory intent.

  While the legislative branch attempts to unwind some of the most egregious rulemakings via the Congressional Review Act, your team can and should seek opportunities to assist. On February 20, the Administration issued an Executive Order calling on agencies to create a "Unified Regulatory Agenda that seeks to rescind or modify" regulations that are "unlawful" or "undermine the national interest" by applying seven broad criteria for evaluation.[3] We would contend that all of the IRS regulations discussed here, and many others, would meet at least two of the EO's tests of being "based on anything other than the best reading of the underlying statutory authority or prohibition" or imposing "significant costs upon private parties that are not outweighed by public benefits."

  Finally, although we applaud the reinstatement of OIRA review of IRS regulations, we would welcome a further step from Treasury: a directive through the chain of command to subject <u>all</u> proposed rulemakings and broad-based binding guidance to the notice and comment safeguards stipulated under the Administrative Procedure Act.

- **Be Strategic with Personnel Realignments.** As directed by a government-wide order, on March 14 DOGE and Treasury finalized workforce reduction recommendations, over and above early retirement offers and probationary layoffs. Yet, other important personnel decisions must take place to properly serve taxpayers. In September 2023, at the height of the Biden Administration's revenue-driven enforcement obsession, the Treasury and IRS formed a combined unit to aggressively assert the Economic Substance Doctrine (ESD) against partnerships and other pass-through entities. Having already done away with supervisory safeguards on lower-level audit staff the year before, and having proposed harsh new rulemakings and guidance on pass-through activities in 2024, the special unit is creating the next crisis for taxpayer rights and government enforcement resources with this arbitrary campaign. Two major cases surrounding the ESD, in which one of the signatories has

---

[1] See, for example, https://www.ntu.org/publications/detail/congress-should-urge-irs-to-avoid-last-minute-rulemaking. See also a recent coalition letter at https://atr.org/letter/25-free-market-groups-activists-support-cra-to-overturn-biden-era-irs-rule/.

[2] For analysis, see https://www.ntu.org/foundation/detail/us-treasury-and-irs-propose-changes-that-could-harm-taxpayers.

[3] See https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency-regulatory-initiative/.

filed amicus briefs,[4] are additional warning signs of a long and unproductive battle ahead for the government. Treasury can ameliorate many of these problems by disbanding the special unit created by your predecessors.[5]

During all of these personnel alignment activities, we strongly implore Treasury and IRS to ensure that sufficient human resources are dedicated toward improving taxpayer service and completing multi-year modernization efforts, along with the National Taxpayer Advocate, the Independent Office of Appeals, and other functions dedicated to protecting taxpayer rights. Indeed, by adequately staffing these functions now, the IRS could put into place more efficient and effective systems that could control personnel and payroll growth in years to come.

- **Restore a Balanced Approach to Enforcement and Oversight.** Intended as narrowly focused tools to give the IRS more information from tax filers engaged in exotic, questionable strategies (e.g., "Son of BOSS" and Guam Trusts), the IRS's listed transaction and transaction of interest authority (TOI) has been stretched to inflict near-total audit coverage on certain parts of the tax filing population, such as thousands of small businesses that utilize captive insurance to manage financial risks. The impacts on IRS examinations, Tax Court workloads, and taxpayers who relied on long-established statutes and guidance have been tremendously harmful. As another example, extending TOI status to common partnership basis matters, and invoking the Economic Substance Doctrine for activities long understood to have such substance,[6] are creating severe uncertainty among taxpayers and practitioners.

  Treasury should evaluate and create guardrails for listed transactions and TOIs that will give taxpayers more certainty of the IRS's enforcement aims. Your leadership would also be welcome in directing IRS Chief Counsel to develop more realistic settlement initiatives between the government and taxpayers. Once used as a fair and cost-effective approach to resolving multiple disputes of the same nature (thereby clearing collection and court dockets),[7] the IRS has recently wielded settlement initiatives more as tools of intimidation. This tactic can backfire as many taxpayers will reason they have little to lose with continuing litigation. Other measures Treasury should help to expedite are the nomination of a permanent Treasury Inspector General for Tax Administration and nominations for members of the long-dormant IRS Oversight Board that was created some 25 years ago to provide strategic private-sector guidance to the Service. Along with the National Taxpayer Advocate, these entities were supposed to comprise a tripartite system of accountability for the IRS.[8]

- **Unwind the Costly and Extra-Legal Direct File Program.** Contrary to statutory instructions in the Inflation Reduction Act, the IRS directed funds toward constructing and debuting an online filing portal[9] in competition with the existing Free File Partnership (which served roughly 20 times the number of taxpayers as Direct File did in 2024[10] at virtually no cost to the federal government). The IRS budgeted some $114 million toward Direct File in 2024, but as the Government Accountability Office noted late last year, the Service has yet to develop sufficient accounting to encompass the true cost.[11] Even at $114 million, this amount could more than double funding for the Volunteer Income Tax Assistance and Tax Counseling for the Elderly Grants.[12] Or, it could be reprogrammed toward the absolutely critical replacement of the Individual and Business Master File systems, a chronically stalled undertaking.[13]

---

[4] https://www.ntu.org/foundation/detail/ntuf-urges-tax-court-to-limit-economic-substance-doctrine-on-captive-insurance-companies.

[5] For additional background on this unit, see Senator Ernst's inquiry from March 25 at https://www.ernst.senate.gov/imo/media/doc/ernst_letter_to_bessent_re_irs_final.pdf.

[6] See, for example, https://www.ntu.org/publications/detail/ntu-submitted-comments-to-the-irs-on-new-compliance-burdens.

[7] For background, see https://www.taxnotes.com/exempt-organizations/conservation-easements/its-high-time-clear-out-tax-courts-easement-backlog/2023/04/25/7g8xx.

[8] For further information, see https://www.ntu.org/publications/detail/compliance-should-be-irs-goal-not-enforcement.

[9] For an excellent timeline of this controversy, see https://www.atr.org/timeline-of-irs-dishonesty-about-direct-file/.

[10] See https://www.irs.gov/newsroom/irs-announces-extension-of-free-file-program-through-2029.

[11] See https://www.gao.gov/assets/gao-24-107236.pdf. See also the recent report from the Treasury Inspector General for Tax Administration at https://www.tigta.gov/reports/audit/inflation-reduction-act-results-direct-file-pilot.

[12] See https://www.irs.gov/newsroom/irs-announces-2024-tax-counseling-for-the-elderly-and-volunteer-income-tax-assistance-program-grants.

[13] For more on IRS modernization, see https://www.ntu.org/publications/detail/ntu-comments-on-irs-return-on-investment-and-the-need-for-modernization.

During your January 16 confirmation hearing before the United States Senate Finance Committee, you pledged "that for this tax season that Direct File will be operative," noting however that you would "consult and study the program and understand it better and make sure that it works to serve the IRS' three goals of collections, customer service and privacy."[14] Given its high net costs, limitations for filers,[15] and the persistent data security risks to the IRS, we urge you to work with the DOGE Team in phasing out Direct File and utilizing its budget for more pressing customer service and modernization needs.

There are many additional initiatives that Treasury can undertake for long-overdue course changes in tax administration. More methodical study of the impact that modern tax systems and top-notch customer service can have on compliance, the use of "regulatory sandboxes" on intricate tax rules, and creation of a volunteer body of experts dedicated to simplifying existing regulations and developing safe harbors, are all worthy pursuits that await exploration from a fully staffed Treasury. For the time being, however, the four areas highlighted above deserve your immediate attention and action.

Thank you for your consideration of our views, and we are ready to assist and support you.

Sincerely,

Pete Sepp, President
National Taxpayers Union

Brent Gardner, Chief Government Affairs Officer and Senior Vice President
Americans for Prosperity

Grover Norquist, President
Americans for Tax Reform

Ryan Ellis, President
Center for a Free Economy

Thomas A. Schatz, President
Council for Citizens Against Government Waste

Ryan Walker, Executive Vice President
Heritage Action for America

Karen Kerrigan, President & CEO
Small Business & Entrepreneurship Council

David Williams, President
Taxpayers Protection Alliance

Cc: Susan Wiles, White House Chief of Staff

Leadership of the House Committee on Ways and Means and the Senate Committee on Finance

---

[14] See https://www.finance.senate.gov/hearings/hearing-to-consider-the-anticipated-nomination-of-scott-bessent-of-south-carolina-to-be-secretary-of-the-treasury.

[15] For more on Direct File's limitations, see https://www.protectingtaxpayers.org/direct-file-facts/.