Dealing with IRS Tax Disputes: An Underfunded, Overwhelmed, Yet Formidable Adversary

Mar 31, 2022

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Tax Law Defined™ Blog

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The Taxpayer Advocate Service recently released the National Taxpayer Advocate's 2021 Annual Report to Congress. Front-and-center in the report: the Internal Revenue Service's abysmal customer service record over the last 18 months. Of note:

- Three million 2020 returns awaiting processing as of October 2021, as the IRS heads into a filing season complicated by the Advance Child Tax Credit, stimulus payment reconciliation, and all the usual difficulties of filing season for individuals, businesses, return preparers, and the government.
- The lowest phone level of service in IRS history: only 32 million of the 282 million calls to the IRS in fiscal year 2021 were answered. At one point in 2021, the level of service fell to just **4%**! Just four out of every 100 calls to the IRS were answered.
- While the IRS has expanded its online offerings to taxpayers in recent years, they continue to fall woefully short of what customers expect in the private sector and of what many state tax agencies have implemented in the past decade. This causes even more pressure on the IRS phone system when taxpayers come calling with questions.

Why are we in this situation? The COVID-19 pandemic is part of the explanation, but not all of it. Following CDC guidance, the IRS has been forced to socially distance staff or temporarily reduce staffing on IRS campuses—even where critical tasks such as paper return processing have to be carried out through means other than telework. They have had to implement huge, complicated new laws for the IRS to implement, including the Economic Impact Payments, Employee Retention Credit, Advanced Child Tax Credit, Retroactive Unemployment Income exclusion, and other provisions included in the CARES Act and the American Rescue plan—among other smaller pieces of legislation. And they've had to deal with this is not one, but two filing seasons—2020 and 2021.

As the IRS workload increased, Congress provided additional funding to the IRS—but not nearly enough. A 10-year reduction in force of over 33,000 full-time equivalents and a 20%, inflation-adjusted decrease in funding over the same period has led to an IRS that cannot fulfill its basic mission, despite the heroic efforts of many individual IRS employees. What's worse, the IRS's primary information technology systems date from the **Kennedy** administration.

Yet, the IRS remains a formidable adversary in tax controversies, whether sought out by the taxpayer or brought on by the government itself. The prospect of handling a tax dispute without an experienced representative can be a recipe for disaster. But how can this be when the agency is so overwhelmed with work and hampered by inadequate technology and manpower?

In our experience, the IRS has often needlessly created its own work from this information and processing blockage. For example, the filing deadline rolls around; IRS records show that a taxpayer hasn't yet filed a return. So, the computer kicks out an automated notice to the taxpayer, warning them of their failure to file—yet the very returns filed lie in an IRS office (or sometimes, trailers) waiting to be processed. The taxpayer sends in correspondence with a copy of the return; the IRS processes that return, but treats it as filed late and assesses a hefty late filing penalty—merely because they haven't gotten around to processing the original return. Frost Brown Todd has represented taxpayers in a number of cases over the past few months where the IRS just now got around to processing a 2019 return, after having demanded penalties and interest from taxpayers for "failing to file" that very return. Fortunately, the IRS recently announced that they will stop sending out these notices until they work through their backlog.

To make matters worse, it's essentially impossible to get through to the IRS—even for practitioners. Most cases are not assigned to a particular IRS employee, so taxpayers and representatives with questions have to call a call center. Long hold times are expected, but much of the time, there's not even a hold time available. Instead, we get the following message: "We're sorry, but due to extremely high call volume in the topic you requested, we're unable to handle your call at this time. Please try again later."

A pro-tip: If you need to call the IRS, find out the hours of operation for the number you need to call. For example, the IRS Practitioner Priority line, where representatives place their calls, opens at 7:00 a.m. local time. So, wake up early, brew your coffee, dial the IRS number, and hit the dial button on your phone **exactly** when the clock strikes 7:00 a.m. You should get right through to someone. In my experience, dialing even 30 seconds late can mean 15-30 minutes of hold time. If you try to dial in at 8:00 a.m., you may not be able to get through at all.

Of course, the IRS's failure to provide or consider the information in a timely fashion doesn't relieve taxpayers of their responsibilities to comply with federal tax laws. While the IRS dysfunction can be a helpful fact in requesting, for example, a penalty abatement due to reasonable cause, taxpayers still need to abide by all timing deadlines to file returns, claims, or appeals with the IRS. Failure to do so can, in some circumstances, relinquish your right to a refund or to effectively dispute an IRS decision.

Given the state of the IRS, now is not a time to handle your tax controversy alone. Please reach out to the author, Patrick W. Thomas, if you have any questions pertaining to this article. You can also visit our Tax Law Defined Blog® to read about the latest developments in federal, state and local tax administration.