

THE 2018 TAX FILING SEASON AND FUTURE IRS CHALLENGES

HEARING BEFORE THE COMMITTEE ON FINANCE UNITED STATES SENATE ONE HUNDRED FIFTEENTH CONGRESS SECOND SESSION

APRIL 12, 2018



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THE 2018 TAX FILING SEASON AND FUTURE IRS CHALLENGES

THURSDAY, APRIL 12, 2018

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:15 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Thune, Heller, Wyden, and Whitehouse.

Also present: Republican staff: Chris Armstrong, Chief Oversight Counsel; and Alex Monie, Professional Staff Member. Democratic staff: Joshua Sheinkman, Staff Director; Tiffany Smith, Chief Tax Counsel; Adam Carasso, Senior Tax and Economic Advisor; and Sarah Schaefer, Tax Policy Advisor for Small Business and Pass-throughs.

The CHAIRMAN. The committee will come to order.

We are going to start with my partner today, because he has to get back to the floor. And then I will give my statement after he finishes his.

OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON

Senator WYDEN. Mr. Chairman, I just want to thank you for your courtesy. You always go to such great lengths to give me the opportunities to juggle a hectic schedule. And the majority leader, Senator McConnell, and I are getting ready to introduce our big agriculture bill in just a few minutes. So I appreciate having a chance to make this opening statement. And I will keep it brief, and then I will come right back after the majority leader and I are finished.

The CHAIRMAN. Sure.

Senator WYDEN. The annual hearing on tax filing typically inspires the level of enthusiasm most people bring to a prolonged root canal procedure. But this year, there are tax policy issues with serious consequences for millions of Americans.

First, our small businesses are increasingly stuck in a bureaucratic twilight zone. There is rampant confusion about how the new tax law works, untested policies, sloppy legislative drafting, and outright mistakes in the law.

On top of that, there is a Trump Cabinet turf battle that has added to the uncertainty and lengthened the time that small businesses are going to be in the dark about how the tax rules apply to them.

So here is the bottom line: estimated tax payments are due, but millions of small businesses do not know how to estimate what they owe.

The owner of a restaurant known as a local landmark, the highly regarded mechanic whose expertise has built a loyal base of regular customers, the finish carpenter whose sought-after work is prized for its sturdiness and good looks, they are all mired in this tax code mystery zone while Trump officials go 12 rounds over who is going to get the final say on the regulations.

I understand there has been news on this issue this morning. The fact is, deadlines for guidance from the administration are slipping. Tax experts are so unsure of the road ahead that they are advising small-business clients to bump up their estimated payments from last year just to be safe.

Now, it is important that we understand that certainty was one of the most important selling points of the tax bill. There would be sure footing for businesses to focus on growing and hiring rather than deciphering a byzantine, outdated tax law. The magical growth effects were going to kick in right away; workers were going to see the big raises.

The fact is, the reality looks awfully different.

All of this confusion and delay, by the way, has created another golden opportunity for powerful lobbyists and special interests to creep in and twist the rules in their favor. They will be after more exclusive carve-outs and sweetheart deals, exactly the kind of favoritism that Americans want eliminated from our tax law. And the likelihood they will be able to exploit these tax loopholes is even greater than in the past because taxpayer audits have fallen to a 15-year low. And the audits of the high-income earners have dropped the most.

I want to thank Acting Commissioner Kautter for joining the committee here today. I want to apologize to him for the bad manners. I will return as soon as we have gotten the bill introduced with the majority leader.

As I said at the outset, I would wager that most Americans would think that a hearing on a tax filing season was about as sleep-inducing as it gets on Capitol Hill.

But I do think this morning we have a chance to uncover important information about what is ahead for taxpayers this year, and going forward, as the law, according to the sponsors, was supposed to be implemented.

Mr. Chairman, I want to again thank you for being so gracious. And I will return just as soon as we have finished our work with the majority leader. And I look forward to working with you on these issues and the rest of our agenda.

The CHAIRMAN. Well, thank you, Senator.

[The prepared statement of Senator Wyden appears in the appendix.]

**OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S.
SENATOR FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. Good morning, and I want to welcome everybody to today's hearing. This is indeed an exciting time. And I am grateful Acting Commissioner Kautter could be here today to talk with

us about the 2018 tax filing season, tax reform, and the challenges and opportunities before the IRS.

As we all know, the IRS is the one agency in our Federal Government upon which virtually all other Federal activities depend. The reason for that is simple: the IRS collects the Federal revenue required to keep the government functioning. This is an important function in our government and a function where process really matters. Therefore, it is critical that the IRS collect the revenue under our new tax laws in a fair, efficient, and effective manner.

When we drain the IRS of resources and handicap its ability to collect revenue, that is not merely a loss in revenue for the Federal Government, it also means that the Treasury must borrow more money, causing our country to go further into debt. That is because the Federal Government does not shrink when the IRS fails to collect taxes owed.

Therefore, handicapping the IRS is also saddling future generations with billions of dollars of debt that they are going to have to repay, one way or another.

But having said that, let me be clear: the IRS stands at a crossroads. On the one hand, the IRS has made marked improvements in recent years, including catching more identity fraud, preventing more fraudulent returns, and moving forward to implement the multitude of tax law changes that have occurred, including the most comprehensive tax reform in a generation.

But on the other hand, it is an agency stuck in the past. It relies on software and core processing systems designed during the Kennedy administration. IRS employees routinely have to manually input return information into agency computers and often require taxpayers to send information via fax machine.

Now, with that said, the IRS is staffed by many of the government's most dedicated, hardest-working civilians, many of whom work in my home State, back in Ogden, UT, yet there are some bad apples who have hurt the service's standing back here in Congress.

Mismanagement, taxpayer abuse, and discrimination against certain taxpayers are all-too-recent memories for those of us who oversee the agency. Nonetheless, it is high time that we work together, as Republicans and Democrats, to help the IRS modernize itself to meet the challenges of the 21st century.

We need to do this to promote bipartisanship, but also to keep the IRS accountable and moving on the right track to best serve hardworking American taxpayers.

That is why, this week, I am watching the House Ways and Means Committee as they mark up legislation to reform several aspects of the IRS. I appreciate their efforts on that front. And I look forward to working with my good friend and colleague Senator Wyden as we explore legislative options here in the Senate.

I am confident that we can find meaningful bipartisan solutions that will help the IRS perform its duties while still remaining clearly under congressional supervision.

Acting Commissioner Kautter has been doing an admirable job leading the agency. On his watch, taxpayer and fraud prevention services have made noticeable gains and are truly great success stories. But it is time we get Mr. Kautter back to his other full-time day job as the Assistant Secretary for Tax Policy.

As such, I am looking forward to the Finance Committee processing the nomination of Mr. Chuck Rettig, who has been nominated by the President to lead the IRS, as well as the nomination of Michael Desmond to be Chief Counsel of the IRS. As soon as the committee receives their paperwork, we will begin processing the nominations.

So with that, today we have the pleasure of being joined by the Acting IRS Commissioner David J. Kautter, who was confirmed last year as the Assistant Secretary of Treasury for Tax Policy.

And, Mr. Kautter, thank you for being here. We appreciate it.

As one would hope, Mr. Kautter has extensive tax practitioner experience. In fact, he has been a tax practitioner for the past 44 years.

I empathize with you. You do not look that bad. [Laughter.] But that is a long time.

Prior to his government service, Mr. Kautter came from RSM, where he worked as a partner starting in 2014.

He has also taught numerous courses in tax law, including four as an executive-in-residence at the Kogod School of Business at American University. Prior to teaching, Mr. Kautter provided advice to clients ranging from individuals to small businesses to global multinational companies for 20 years at Ernst and Young. And during much of that time, he was the leading tax specialist for compensation and benefits.

Mr. Kautter has also served in the government before, as tax legislative counsel to Senator Jack Danforth from 1979 to 1982, during which time he worked on the Economic Recovery Tax Act of 1981.

Mr. Kautter graduated with a bachelor's degree from the University of Notre Dame and later received his juris doctor from Georgetown University.

So, Mr. Kautter, please proceed with your statement, and we look forward to hearing from you.

[The prepared statement of Chairman Hatch appears in the appendix.]

STATEMENT OF DAVID J. KAUTTER, ACTING COMMISSIONER, INTERNAL REVENUE SERVICE; AND ASSISTANT SECRETARY FOR TAX POLICY, DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. KAUTTER. Thank you, Mr. Chairman.

Chairman Hatch, members of the committee, thank you for the opportunity to provide you with an update on the 2018 tax filing season and to discuss IRS operations, both current and in the future.

With the tax deadline for individuals just 5 days away, I am pleased to report the filing season continues to go well. As of last Friday, the IRS had received more than 103 million individual tax returns, which is about two-thirds of all the returns we expect to receive. We have issued more than 75 million refunds so far for \$226 billion. About 80 percent of all the returns filed so far claimed a refund, with the average refund totaling approximately \$2,900.

These numbers are consistent with those for 2017, with the number of returns received up from last year by about 150,000 at this

point. The number of returns filed electronically is up about 440,000. And the average size of refunds is up \$13.

This year, the IRS faced two major challenges as it worked to deliver the filing season. The first was the need to begin implementing the Tax Cuts and Jobs Act. This new statute requires extensive work by the IRS this year and next to serve the needs of taxpayers and tax professionals. In fact, the IRS began implementation efforts shortly after the legislation was signed last December.

The second major challenge was the need to implement tax-related provisions of the Bipartisan Budget Act enacted in early February shortly after the filing season had started. This required us to reprogram our processing systems to handle the retroactive extension through December 31st of 2017 of more than 30 individual and business tax benefits that had expired at the end of 2016. This was the first time the IRS had ever been required to implement retroactive tax extensions after the beginning of a filing season.

This filing season was also the second in which the IRS delayed issuing tax refunds until February 15th for returns claiming the Earned Income Tax Credit or the Additional Child Tax Credit under a requirement established by the PATH Act.

Like last year, this change slowed the overall pace of refunds early in the filing season, but that pace accelerated with the release of nearly \$47 billion of EITC and Additional Child Tax Credit refunds shortly after February 15th.

During the filing season and throughout the year, the IRS provides assistance to taxpayers to help them meet their tax obligations through a variety of channels. So far this year, for example, we have handled more than 20 million calls on our toll-free helpline, provided in-person assistance to more than 790,000 people who visited one of our Taxpayer Assistance Centers, and provided a wealth of tax information on our website, *IRS.gov*, which has been visited more than 335 million times.

The IRS also supports about 11,000 Volunteer Income Tax Assistance and Tax Counseling for the Elderly sites around the country. These sites offer free tax preparation services for low-income taxpayers, older Americans, people with disabilities, and those with limited proficiency in English. So far this year, more than 2.6 million tax returns have been prepared at VITA and Tax Counseling for the Elderly sites.

Another important program we support is Free File, which allows taxpayers earning \$66,000 or less to prepare and e-file their taxes at no cost. Each year, more than 2.5 million tax returns are prepared using Free File.

In regard to phone service, I am pleased to report that this filing season we are again seeing a strong level of service on our toll-free line, as we did in 2017. As of March 31st, our phone level of service was close to 80 percent, and we anticipate the average for the filing season as a whole will be about 80 percent.

While all our service channels are important, we realize that taxpayers' needs have been evolving, with more taxpayers conducting their business using digital tools at the time and place of their choosing. We are continuing our investments in improving the use

of online tools and offerings and modernizing the taxpayer experience.

As we delivered the 2018 filing season, the IRS also made and continues to make important progress in implementing the Tax Cuts and Jobs Act. Our initial steps have included revising the withholding system to take into account various changes made by the statute. We started in January by issuing updated withholding tables for employers to use. Then at the end of February, we released an update to our withholding calculator on *IRS.gov* to help employees adjust their withholding amount based on their particular financial situation.

Also in February, we issued a new Form W-4 to more fully reflect the law.

Apart from our efforts on withholding, we have also begun issuing guidance. This includes several notices and other information to help corporations begin complying with the transition tax under new section 965.

Another area where we are working to issue guidance as soon as possible involves the deep reduction in the corporate income tax rate to 21 percent. We realize the need for guidance is especially acute for fiscal year taxpayers, so we are making that a priority.

Going forward, implementing tax reform will remain a priority for the IRS in 2018 and 2019. This effort touches on many of the issues of concern to the IRS as we move into the future, including providing adequate staffing to serve taxpayers and ensuring modern, secure IT systems to support our work for the Nation.

In my previous testimony to this committee, I noted the IRS would need additional resources for fiscal 2018 and 2019 to ensure successful implementation of tax reform. We very much appreciate the additional \$320 million that was approved by Congress recently as part of the omnibus budget bill. This funding ensures we can move forward with critical implementation activities in a timely manner, and we will be able to test our processing systems in the first quarter of fiscal 2019, shortly before the filing season.

Finally, I should mention that yesterday Treasury and OMB reached agreement on a new framework for OMB review of certain tax regulations, which we believe meets the twin objectives of increasing economic analysis and review of tax rules while preserving timely tax guidance for taxpayers.

Mr. Chairman and members of the committee, I would be happy to take your questions. Thank you.

The CHAIRMAN. Well, thank you. We appreciate your report and appreciate the hard work that you are doing.

[The prepared statement of Mr. Kautter appears in the appendix.]

The CHAIRMAN. Let me begin with this. Last December, Congress passed the most historic tax reform legislation in a generation. Now, the lack of implementation of those reforms falls to the IRS and the Treasury Department.

In February, the Treasury Department released its priority guidance plan, which listed 18 items under, quote, "initial implementation of the Tax Cuts and Jobs Act," unquote.

Acting Commissioner Kautter, can you provide the committee an update on how this process is going and whether there is a timeline

for these provisions? For instance, when should we expect new information on these matters and new guidance concerning pass-through deductions under section 199-A?

Mr. KAUTTER. Yes, sir. Well, immediately upon enactment of the Tax Cuts and Jobs Act, we started to approach tax reform implementation in a disciplined, project-managed approach. We have built a roadmap of what needs to be done. We are constantly adjusting that roadmap.

We have sought stakeholder input as part of the process. And we have mapped out at this point all the forms that need to be amended, all the instructions that need to be updated, and the publications that need to be changed.

At this point, our estimate is that we will need to amend as many as 450 tax forms, instructions, and publications to fully implement the tax reform act.

We expect to have new forms drafted by the end of April, for the most part. We expect to have most new instructions drafted by the end of May. And our plan is to release those forms and instructions over the summer for taxpayers and tax advisers to review and comment on.

Also this month, we will begin programming our new systems. There are about 140 integrated, interrelated tax systems, programming systems that need to be updated. Probably three-fourths of the cost of tax reform implementation will be the cost of changing technology. We estimate about 19 percent of the cost will relate to guidance in terms of education of the taxpayers, education of the IRS workforce, outreach, and so forth.

About 4 percent will relate to regulations and frequently asked questions. And another 4 percent is for the forms and the publications.

So we are off to a good start. I am confident at this point that we have a good plan. We are executing the plan. I think the time line is aggressive.

We do not really have a choice; we need to get this done. And we are focused—we are focused on it.

I think you mentioned, Mr. Chairman, section 199-A. With respect to that, I would estimate that we will have some guidance out by summer, early summer hopefully.

The CHAIRMAN. Okay. As you know, the House Ways and Means Committee recently approved IRS reform legislation. This committee is currently reviewing the legislation, and I will be working closely with Ranking Member Wyden and other members of this committee as we move forward with legislation here.

Now, Acting Commissioner Kautter, you have been at the IRS for a short time, but you have been there long enough, it seems to me, and working on tax administration issues for your entire career, to make some suggestions to us here.

In your opinion, what are some of the key legislative changes that we could help you with that would most improve the IRS's performance?

Mr. KAUTTER. Sure, Mr. Chairman. Well, I think the bill that was approved by the Ways and Means Committee yesterday is, by and large, a constructive piece of legislation.

I would propose three probably legislative changes. One thing I would do is require mandatory electronic filing of all business and information returns.

I would require the IRS to establish online taxpayer accounts to move the IRS forward. It is on that road, but I would encourage the IRS to establish accounts online for all taxpayers.

And I would codify the IRS mission with a focus on taxpayer service. After that, I think it becomes a matter of leadership, measurement, and accountability.

For the most part, my personal view is that the IRS has at its access the tools that it needs, for the most part, to be a taxpayer-responsive, high-performing organization.

But I think, first, it has to be clear that the highest priority for everyone in the IRS is to help taxpayers meet their obligations under the tax law. We have to acknowledge that enforcement is part of our responsibility, but I think we have to continuously message the responsibility to help taxpayers comply with the law.

Secondly, I would put in place measurements that determine whether various parts of the IRS are facilitating compliance with the tax law. For example, right now we measure a level of service by how quickly telephone calls are answered. I think that is an important measurement, but I think it is too narrow.

I think if we are going to measure taxpayer service, we should expand the measurements that we focus on to include service provided through Taxpayer Assistance Centers, Free File, returns prepared by the volunteer organizations, and so forth.

Third, while I think enforcement is important, as I said, I think it needs to be viewed as part of a continuum, in that enforcement and taxpayer assistance are not mutually exclusive.

Fourth—you have mentioned this already—I would adequately fund the IRS, but with oversight. I would focus on building out online accounts and services.

Fifth, I would make sure there was accountability within the organization.

And finally, the cardinal rule of organizational management is that structure follows strategy. So if strategy is greater focus on taxpayer assistance, I think the IRS needs to look at restructuring itself along lines that would facilitate greater taxpayer assistance.

The CHAIRMAN. Well, thank you.

Let me turn to Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Commissioner Kautter, I stopped by today to renew the conversation that we had back in February. I asked you a number of questions then, and we have not had a response, so I would like to pursue them.

We were talking about the IRS's role in combating foreign election spending. As you know, one of the dominant vehicles for influence in American elections these days is the so-called 501(c)(4), which is an entity regulated by the IRS.

And my questions to you had to do with what the IRS does to prevent foreign interests from laundering money through 501(c)(4)s and into our elections.

Since February, we have learned a little bit more. In particular, thanks to Senator Wyden's inquiries, we have learned that the Na-

tional Rifle Association has accepted foreign donations. Now, the NRA claims that none of those donations goes towards political expenditures, but given the fungible nature of money, that is a questionable assertion at best.

What the NRA told Senator Wyden is that “a review of our records has found no foreign donations in connection with a United States election.” That is the way they phrased it. It sounds a bit like a lawyered answer.

So I would like to renew some questions and add some new ones. One is—and these can be questions for the record; I do not expect you to know this off the top of your head—has the IRS investigated or is it investigating this claim by the National Rifle Association that the Russian money did not go to its election efforts?

Second, how does the IRS ensure that foreign money is not entering our political system through outside organizations, like LLCs and tax-exempt organizations?

The 501(c)(4) organizations are required to disclose their donors to the IRS, but I am interested to know, first, what does the IRS do with that information? Does it forward it to FinCEN and other places? And second, what does it do when a potential shell corporation emerges as the donor?

I made a sort of snarky remark in my last question to you about, what if it says “Russian Influence, LLC, a Delaware Corporation?” Presumably, somebody would want to look behind Russian Influence, LLC to see what it is up to.

Now obviously, the Russians are not going to use such an obvious name, but the problem with shell corporations obscuring our ability to know who is influencing our elections is a real one. And I am interested in what the IRS does to probe through shell corporation information in dealing with politically active 501(c)(4)s. Do you coordinate with FinCEN?

And also, I would like an overview of what resources you devote to policing the rules about 501(c)(4)s.

Which takes me to a second but related question, which is that we see very often in the IRS filings entities that aver to you, under oath, that they are not spending any money at all in any effort to influence or attempt to influence State, Federal, municipal, or other elections. I think it is question 15 on the form, as I recall it—I do not have it in mind. And then they run over to the Federal Election Commission and disclose that they spent \$17 million or \$35 million on electioneering advertisements.

It seems to me that that predicates at least an inquiry as to whether somebody is perhaps not telling the truth on one or the other of those Federal forms. And I would like to know what steps the IRS is taking to make sure that those questions are in fact being answered truthfully to the IRS.

So I know that is putting a lot on your plate, but I am sincere about trying to get these questions answered. We have not had a response to the February questions. I hope you will treat this as a priority and make sure that we do get answers to what I think are fair and sensible questions, particularly in light of the election manipulations we have seen.

Mr. KAUTTER. Certainly, Senator. Those are fair questions. And we have been working on the response to your questions from the last hearing.

It is accurate that the 501(c)(4) organizations are required to submit donor lists to the Internal Revenue Service.

Our focus in auditing those organizations is primarily on whether they are engaged in excessive political campaign intervention. It has not been focused on the source of the funds that are contributed to those organizations.

And we will look into—at this point, we are not sharing any information, to my knowledge, with FinCEN or other organizations. But I take your question seriously, and we will look into it, I promise.

Senator WHITEHOUSE. Thank you.

Mr. Chairman, if it does turn out, particularly given all of the interest in this issue that has emerged, that the IRS is not in fact looking behind shell corporations and seeing what are the potential avenues for foreign influence through 501(c)(4)s, I would like to work with you and other members of the committee to try to make sure that they understand that they do have that authority to test these propositions.

And similarly, if they are looking at the extent to which the 501(c)(4) is focused on political activity, then, particularly if they are taking a flat-out “no” at face value on the question when that flat-out “no” appears to be belied by disclosures to State and Federal election commissions, again, I think we ought to do what we can to make clear that the IRS has the authority to answer those questions and get back to us.

So we will see how this turns out, but I may very well be turning to the chairman to make sure that the IRS has the right authority and we are getting the right answers.

The CHAIRMAN. Well, thank you, Senator. We will certainly work with you and see if that can happen.

We have had a vote over on the floor, but it has been quite a while since the vote.

So, Mr. Kautter, I think what we will do is, we will keep the record open for Senators to ask you questions that you can answer in writing, if we can do that.

Mr. KAUTTER. Yes, sir.

The CHAIRMAN. I have a number of questions that I will submit to you.

And with that, we will just recess this hearing until further notice.

Mr. KAUTTER. Thank you, Mr. Chairman.

The CHAIRMAN. Thanks so much. We appreciate you coming here today and appreciate your testimony here.

Mr. KAUTTER. Yes, sir. Thank you.

The CHAIRMAN. Thank you so much.

With that, we will recess until further notice.

[Whereupon, at 10:46 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. ORRIN G. HATCH,
A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R-Utah) today delivered the following opening statement at the Senate Finance Committee hearing entitled “The 2018 Tax Filing Season and Future IRS Challenges.”

This is an exciting time, and I am grateful Acting Commissioner Kautter could be here today to talk with us about the 2018 tax filing season, tax reform, and the challenges and opportunities before the IRS.

As we all know, the IRS is the one agency in our Federal Government upon which virtually all other Federal activities depend.

The reason for that is simple: the IRS collects the Federal revenue required to keep the government functioning. This is an important function in our government, and a function where process really matters.

Therefore, it is critical that the IRS collect the revenue under our new tax laws in a fair, efficient, and effective manner. When we drain the IRS of resources and handicap its ability to collect revenue, that isn’t merely a loss in revenue for the Federal Government, it also means that the Treasury must borrow more money, causing our country to go further into debt.

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Therefore, handicapping the IRS is also saddling future generations with billions of dollars of debt they will have to repay, one way or another.

But having said that, let me be clear, the IRS stands at a crossroads.

On the one hand, the IRS has made marked improvements in recent years. Including catching more identity fraud, preventing more fraudulent returns, and moving forward to implement the multitude of tax law changes that have occurred, including the most comprehensive tax reform in a generation.

But on the other hand, it is an agency stuck in the past. It relies on software and core processing systems designed during the Kennedy administration. IRS employees routinely have to manually input return information into agency computers, and often require taxpayers to send information via fax machine.

Now with that said, the IRS is staffed by many of the government’s most dedicated, hardest working civilians. Many of whom work in my home State, back in Ogden, UT.

Yet, there are some bad apples who have hurt the service’s standing back here in Congress.

Mismanagement, taxpayer abuse, and discrimination against certain taxpayers are all too recent memories for those of us who oversee the agency.

Nonetheless, it’s high time that we work together, as Republicans and Democrats, to help the IRS modernize itself to meet the challenges of the 21st century.

We need to do this to promote bipartisanship, but also to keep the IRS accountable and moving on the right track to best serve hard-working American taxpayers.

That is why, this week, I am watching the House Ways and Means Committee as they mark up legislation to reform several aspects of the IRS. I appreciate their efforts on that front. And I look forward to working with my good friend and colleague, Senator Wyden, as we explore legislative options here in the Senate.

I am confident that we can find meaningful, bipartisan solutions that will help the IRS perform its duties while still remaining clearly under congressional supervision.

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PREPARED STATEMENT OF HON. DAVID J. KAUTTER, ACTING COMMISSIONER, INTERNAL REVENUE SERVICE; AND ASSISTANT SECRETARY FOR TAX POLICY, DEPARTMENT OF THE TREASURY

Chairman Hatch, Ranking Member Wyden, and members of the committee, thank you for the opportunity to provide you with an update on the 2018 tax filing season and discuss IRS operations.

I am pleased to report that the 2018 filing season, which began on January 29th, has gone well in terms of tax return processing and the operation of our information technology systems. As of March 30th, the IRS received more than 94.1 million individual returns. We have issued more than 73.3 million refunds for more than \$212.3 billion. About 80 percent of returns filed so far claimed a refund, with the average refund totaling approximately \$2,900. It is important to note that, although the tax filing deadline for individuals is only a few days away, the work of the filing season continues throughout the year, as IRS employees continue to process tax returns, including amended returns, and returns for which taxpayers had requested an extension beyond April 17th.

While the IRS was working to deliver the filing season, we also had two policy implementations to deliver on. The first was the need to begin implementing the Tax Cuts and Jobs Act, which was the most sweeping change to tax law in more than 30 years. This new statute requires extensive work by the IRS this year and next to serve the needs of taxpayers and tax professionals. In fact, the IRS began implementation efforts shortly after the legislation was signed into law last December.

The second major policy implementation was the tax-related provisions in the Bipartisan Budget Act enacted in early February, shortly after the filing season had started. The IRS began work immediately after passage of the legislation to reprogram its processing systems to handle more than 30 individual and business tax benefits that had expired at the end of 2016. This was the first time the IRS had ever been required to implement retroactive tax extensions this late in a filing season.

Thanks to the extraordinary efforts of IRS employees and assistance from the Nation's tax community, by late February we had completed system reprogramming for the three benefits that were most likely to be claimed on tax returns early in the filing season. We estimate that approximately 7 million taxpayers are eligible to claim those three benefits. They are:

- The exclusion from gross income of discharge of qualified principal residence indebtedness;
- The treatment of mortgage insurance premiums as qualified residence interest, generally claimed by low- and middle-income filers; and
- The deduction for qualified tuition and related expenses.

Since then, the IRS has completed reprogramming its systems and has updated forms and instructions to accommodate the other extender provisions in the Bipar-

tisan Budget Act. They include extensions for several energy-related tax incentives: a credit for nonbusiness energy property; the alternative motor vehicle credit; and credits for qualified plug-in electric drive motor vehicles and certain two-wheeled vehicles.

This filing season was also the second in which the IRS held tax refunds until February 15th for returns claiming the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit (ACTC) under a requirement established by the Protecting Americans from Tax Hikes (PATH) Act. Like last year, this change slowed the overall pace of refunds at the beginning of the filing season, but that pace accelerated once the IRS released 9.4 million EITC and ACTC refunds, totaling approximately \$46.9 billion, shortly after February 15th.

TAXPAYER ASSISTANCE EFFORTS

A critical component of the filing season involves the assistance the IRS provides to taxpayers, to help them fulfill their tax obligations as quickly and easily as possible. The IRS remains mindful of the need to do everything we can to deliver secure, high-quality assistance through every available channel, including online, in person, and over the phone. We continue to expand opportunities for taxpayers and their representatives to complete service and compliance interactions through their preferred channel.

While all of our service channels are important, we realize that taxpayer needs have been evolving, with more taxpayers conducting their business using digital tools at the time and place of their choosing. We will continue our investments in improving the use of online tools and offerings and modernizing the taxpayer experience.

The IRS provides a wealth of tax information on *IRS.gov*, which was visited more than 495 million times during fiscal year (FY) 2017, and more than 335 million times so far in FY 2018. The most heavily used part of our website is the “Where’s My Refund?” electronic tracking tool, which was used about 278 million times in FY 2017, and more than 205 million times already this filing season.

Over the last several years, the IRS has launched a number of digital applications to improve taxpayers’ interactions with the IRS. These include:

- Get Transcript, which allows taxpayers to go online, verify their identity with strengthened security, and download a copy of their tax records from prior years. Taxpayers used this tool 15.5 million times in FY 2017 and 7.4 million times so far this fiscal year;
- Online Payment Agreement, a secure, safe, and easy process taxpayers can use to set up a payment plan and pay their tax obligations over time. A total of 798,000 online agreements were set up in FY 2017, and 303,000 have been set up so far this fiscal year; and
- Direct Pay, which provides taxpayers with a secure, free, quick, and easy online option for making tax payments. This tool was used 10.2 million times in FY 2017 and has been used 4.1 million times so far this fiscal year.

Our work in this area also includes continuing the development, over time, of online accounts at the IRS where taxpayers can log in securely, obtain the information they need about their account and interact with the IRS as needed.

In 2016, we took the first step toward a fully functional IRS online account with the launch of an application on *IRS.gov* that provides information to taxpayers who have straightforward balance inquiries. We followed that up with another feature that lets taxpayers see recent payments posted to their account. We anticipate the online account will remain a key point of contact between the IRS and taxpayers, and, subject to the availability of resources, we will add other features to this platform over time, as they are developed and tested with taxpayers and tax professionals.

Another important service delivery channel continues to be our toll-free telephone line, which constitutes one of the world’s largest customer service phone operations. In FY 2017, the IRS received more than 52 million taxpayer calls, with more than 40 percent, or about 23 million, handled by our customer service representatives. The rest were calls made to lines providing automated messages containing helpful tax information.

In regard to phone service, I'm pleased to report that during the 2018 filing season we are again seeing a strong level of service (LOS) on our toll-free lines, as we did in 2017. As of March 31st, our phone LOS was close to 80 percent, and we anticipate that the average for the 2018 filing season as a whole will be about 80 percent. Average LOS during the 2017 filing season was 75 percent, and 70 percent for the 2016 filing season.

The IRS has also been successful in providing timely assistance to taxpayers who visit one of our Taxpayer Assistance Centers (TACs) around the country. This is the second year that all TACs are offering appointments in advance, a process that we have found dramatically cuts wait times for TAC visitors. As in 2017, we have had no reports of long lines during the 2018 filing season—clear evidence that the appointment process reduces burden on taxpayers who seek in-person assistance.

We have also found this arrangement provides major advantages to taxpayers. First, when people call for an appointment, we can tell them what documents they need to bring with them, reducing the number of return trips. Second, the IRS employee making the appointment can often help taxpayers resolve their issue over the phone or refer them to the help they need, eliminating the need to visit a TAC. So far this year, about half of those who called for an appointment were able to resolve their issue without actually having to come in for an appointment. This is an important point, because TAC employees can now spend more time with those who do visit, as they tend to have more complex issues that cannot be resolved over the phone.

The total number of taxpayers served at TACs this year through March 31st is more than 790,000, which includes nearly 52,000 who visited a TAC without an appointment. We encourage taxpayers to make appointments in advance, so they can be assured of quick and efficient service, but we are also doing whatever we can to serve taxpayers who show up without an appointment.

SAFEGUARDING IRS SYSTEMS AND TAXPAYER DATA

Another important aspect of taxpayer service, during the filing season and throughout the year, involves the IRS's efforts to protect IRS systems and taxpayers' personal data from tax-related identity theft. Over the last several years, the IRS has made significant progress in this area.

Much of that progress is the result of Security Summit initiatives that help safeguard the Nation's taxpayers. In fact, the 2018 filing season was the third in which the IRS worked with its Security Summit partners to put in place many protections to help stop fraudulent returns from entering tax processing systems.

I'm pleased to report recent statistics show there continues to be a substantial decline in several indicators of tax-related identity theft. That includes the number of taxpayers reporting to the IRS they are victims of identity theft; the number of tax returns with confirmed identity theft; and the number and amount of fraudulent refunds recovered by financial institutions. The following table shows the declines in these areas between 2015 and 2017.

Table 1: Identity Theft Refund Protection by Activity and Dollar Amount, Calendar Years 2015–2017

	2015	2016	2017	Percent Change (2015–2017)
IRS Forms 14039, Identity Theft Affidavit	677,000	401,000	242,000	– 65%
Tax returns with confirmed identity theft	1,400,000	883,000	597,000	– 57%
Estimated dollar amount of revenue protected	\$8.7 billion	\$6.4 billion	\$6 billion	– 31%
Fraudulent tax refunds recovered by financial industry	249,000	124,000	144,000	– 42%

**Table 1: Identity Theft Refund Protection by Activity and Dollar Amount,
Calendar Years 2015–2017—Continued**

	2015	2016	2017	Percent Change (2015–2017)
Estimated dollar value of re-covered refunds	\$852 million	\$281 million	\$204 million	– 76%

Source: IRS data

Despite all the progress that has been made, we realize we cannot let up in the fight against tax-related identity theft. As we have strengthened our defenses, identity thieves are becoming more sophisticated, and attempting to obtain more detailed financial information to help them do a better job of impersonating legitimate taxpayers and file more realistic-looking tax returns to attempt to obtain fraudulent refunds.

Cyber-thieves are targeting tax professionals, human resources departments, businesses, and other places with large amounts of sensitive financial information. For that reason, the IRS and its partners are not only continuing to improve our safeguards against fraudulent returns, but we also continue to encourage taxpayers, tax professionals, and businesses to do everything they can to protect their data and avoid becoming victims of the tax scams that continue to proliferate.

TAX REFORM IMPLEMENTATION UPDATE

The IRS continues to make important progress in implementing the Tax Cuts and Jobs Act. As I noted when I testified to this committee in February, implementing the new tax law is one of the IRS's highest priorities, and will be a major Service-wide effort for some time. This work touches on many major aspects of the tax system affecting both individual and business taxpayers. Our main goal is to ensure everyone can navigate and understand the changes made by the new law, and be able to file their returns in 2019 as quickly and easily as possible.

Our Tax Reform Implementation Office (TRIO), which was set up in January, continues to coordinate our efforts. The TRIO is responsible for interacting with our business divisions and our Office of Chief Counsel to ensure a smooth roll-out of everything needed to implement the law. Where there is overlap in responsibilities, the TRIO will ensure IRS divisions collaborate to get the job done. The TRIO has a broad portfolio: it is responsible for identifying areas of impact, establishing and monitoring implementation action plans, ensuring communication with external and internal stakeholders, and making sure we address any risks that arise in our work.

Regarding recent implementation activities, one critical area we identified early on was income tax withholding. The IRS moved quickly to begin revising the withholding system to take into account various changes made by the statute, such as increasing the standard deduction, removing personal exemptions, increasing the Child Tax Credit, limiting or discontinuing certain deductions, and changing the tax rates and brackets. This issue affects literally every taxpayer who receives a paycheck.

We started in January by issuing updated withholding tables for employers to use. These tables were designed to produce the correct amount of tax withholding for taxpayers with simple tax situations. Then at the end of February, we released an update to our Withholding Calculator on *IRS.gov*, to help employees adjust their withholding amount based on their particular financial situation. This will be especially helpful for taxpayers with more complex tax situations. Through March 8th, the Withholding Calculator page on *IRS.gov* had been viewed more than 1.2 million times.

Also in February, we issued a revised Form W–4, Employee's Withholding Allowance Certificate, to more fully reflect the new law. This form takes into account such provisions as the changes in available itemized deductions, increases in the Child Tax Credit, the new dependent credit, and the repeal of dependent exemptions.

The IRS is continuing efforts to encourage taxpayers to check their withholding, and do so as soon as possible. For example, in late March we conducted a "Paycheck Checkup" public awareness campaign to get the word out to taxpayers about what

they can do to make sure the correct amount of tax is being withheld from their pay. The activities during this special weeklong campaign included the release of an IRS YouTube video series and several online Tax Tips. These were designed to walk taxpayers through what they need to know about withholding, and help them navigate complex issues that might affect how much should be withheld from their pay.

Another important area where the IRS has made significant early progress on tax reform implementation involves the guidance taxpayers and tax professionals need to understand and navigate the new law. This involves both formal guidance, such as regulations and notices, and so-called “soft” guidance, such as press releases and Frequently Asked Questions (FAQ) about tax topics.

In February, the Treasury Department and the IRS provided an initial idea of where we are headed, with an update to the Priority Guidance Plan. As a first step, the revised plan contains 18 new guidance projects related to tax reform. There are many other areas of the law that will require additional guidance, given that, overall, there are 79 explicit grants of regulatory authority in the tax reform statute.

While much of the guidance we are developing will take time, there were certain areas we needed to address quickly. In late December, we released initial guidance to help corporations begin complying with the transition tax imposed on untaxed foreign earnings of foreign subsidiaries of U.S. companies under new code section 965, which became effective upon enactment of the new law. We followed that up with additional notices, and last month released a set of FAQs with information to assist taxpayers filing their 2017 tax returns, including how to report section 965 income and how to report and pay the associated tax liability.

Another area where we are working to issue guidance as soon as possible involves the deep reduction in the corporate income tax rate to 21 percent. We know there is much guidance needed in regard to this change, and there are several projects underway. We realize the need for guidance is especially acute for fiscal year filers, so we are making that a priority.

Those are just a few of the actions the IRS has taken so far in its ongoing efforts to implement the new tax law. We are also continuing the work needed to create or revise approximately 450 forms and publications affected by tax reform. Work also continues on reprogramming about 140 information technology systems, with special focus on returns processing and compliance systems, to ensure those systems are ready for next year’s tax filing season. We are also developing the training that will be needed to familiarize our workforce with the new tax law and, in particular, ensure our customer service representatives can provide the most effective service possible to taxpayers when they have questions about the tax changes.

In my previous testimony to this committee, I noted the IRS would need additional resources to ensure successful implementation of tax reform. We appreciate the additional \$320 million approved by Congress as part of the omnibus appropriations bill for FY 2018. This funding ensures the IRS can move forward with critical implementation activities in a timely manner, and we will be transmitting updated implementation plans and 2-year cost estimates to Congress in the very near term.

Chairman Hatch, Ranking Member Wyden, and members of the committee, that concludes my statement. I would be happy to take your questions.

QUESTIONS SUBMITTED FOR THE RECORD TO DAVID J. KAUTTER

QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

Question. Perhaps one of the most difficult challenges the IRS faces is with information technology. Directly related to that challenge is the question of human capital. For instance, the IRS’s Individual Master File is its legacy tax processing system and is in many ways the backbone of the IRS’s information technology infrastructure. But that system, which is based on antiquated software, has only 17 developers whom the IRS considers to be subject matter experts. We have heard concerns that some of those employees will retire soon, and many of those remaining will be eligible for retirement within 4 years. Young IT experts aren’t necessarily eager to join the IRS to learn how to run antiquated systems.

Almost 60 percent of the IRS’s workforce is over the age of 50, and there are not enough younger workers coming in to replace those who retire.

What can IRS do to attract younger skilled workers, and what can Congress do to help?

Answer. The IRS recognizes that the current age distribution of its workforce poses a long-term risk to the organization, particularly in highly skilled, technical programs. As of May 2018, 32.2 percent of the IRS's current permanent workforce will be eligible to retire by the end of fiscal year (FY) 2020. As you note, IRS's human capital challenges include a limited number of subject matter experts in key information technology (IT) areas. Similar challenges exist in other technical and specialized fields.

The IRS has taken several steps in recent years to mitigate this risk. It has expanded partnerships with colleges and universities and participated in job fairs to recruit new talent, with a focus on military veterans and IT disciplines such as cybersecurity. The IRS is establishing a centralized recruitment office to better coordinate and oversee these efforts. The IRS has also leveraged flexibilities under the Federal Pathways internship program and recent graduate hiring authorities to attract and retain new talent. In FY 2017, the IRS hired 307 Pathways interns and recent graduates. This includes 121 IT positions. Additionally, the IRS has increased use of the Student Volunteer Program and other unpaid third-party internships to help students explore IRS career opportunities.

Congress can assist the IRS by reinstating the IRS's streamlined critical pay authority (SCP), which provided the IRS some flexibility to recruit and retain highly skilled employees with specialized expertise, particularly in high-demand areas of information technology. Established under the Restructuring and Reform Act of 1998, SCP allowed the IRS to hire up to 40 uniquely qualified experts for 4-year appointments to revitalize and enhance its workforce. The SCP authority allowed the IRS to hire top-caliber talent under an abbreviated timeline and at a salary more competitive with private industry. The IRS SCP authority expired in 2013, and the administration's FY 2019 budget requests that Congress reinstate this authority through FY 2022. Reinstating the SCP authority would allow IRS to recruit and hire other highly specialized talent for critical positions to modernize, innovate, protect taxpayer data, and accomplish the IRS mission.

Question. Access to telephone customer service has improved since it reached a low point in 2015. IRS has also redesigned its website, added online access to account information, and offered appointments to its walk-in locations serving taxpayers in person.

What has IRS done to achieve these improved customer service results?

Answer. Each year, we integrate IRS messaging, communication strategies, and outreach efforts. This approach allows us to effectively deliver information and guidance to the public about the services and resources available to help taxpayers and their representatives understand and comply with their tax obligations. In recent years, the IRS has employed two communication strategies that further focus our efforts to help taxpayers. First, to increase the number of taxpayers we serve, the IRS continues to educate our customers to the availability of self-help options on *IRS.gov*.

Second, in the last two filing seasons, there have been important changes taxpayers needed to know before filing. In response, we implemented the Get Ready campaign in fall 2016 and 2017. The campaigns focused on helping taxpayers understand, before filing season, the changes that may affect processing their tax returns and issuing refunds. These messages were also incorporated in communications throughout filing season. The IRS is continuing to build on these best practices in preparation for the 2019 filing season.

The IRS toll-free telephone line, which constitutes one of the world's largest customer service phone operations, is critical to taxpayer service. Taxpayers calling this line first navigate through automated menus informing them how to get their questions answered by selecting from menu options of frequently asked topics, such as refund status, transcripts, tax reform law, individual and business tax topics, and how to find information on *IRS.gov*.

In FY 2017, the IRS received more than 52 million taxpayer calls, with more than 40 percent, or about 23 million, handled by IRS customer service representatives. The rest were calls made to lines providing automated messages containing helpful tax information. Through April for FY 2018, the IRS received more than 34 million taxpayer calls, with more than 40 percent, or about 14 million, handled by IRS customer service representatives.

Recognizing that taxpayers may have questions about the Tax Cuts and Jobs Act provisions, the IRS will now answer tax reform tax law questions year-round, not just in filing season. The IRS also decided to route calls to dedicated CSRs for topics such as Basic Tax Reform (Itemized Deductions, Tax Rates, Child Tax Credit, etc.), Roth Conversions, Tax Rollover Period for Plan Loan Offset Amounts, Qualified Business Income Deduction, Disaster Areas Relief for 2016, Casualty Loss, Moving Expenses Deduction, and Affordable Care Act.

The IRS has also been successful in providing timely assistance to taxpayers who visit one of its Taxpayer Assistance Centers (TACs) around the country. This is the second year that all TACs are offering appointments in advance, a process that the IRS has found dramatically cuts wait times for TAC visitors. As in 2017, the IRS has had no reports of long lines during the 2018 filing season.

The IRS has also found this arrangement provides advantages to the taxpayer. When taxpayers call for an appointment, the IRS employee making the appointment can often help the taxpayers resolve their issue over the phone or refer them to the resources they need, eliminating the need to visit a TAC. For those that need an appointment, we can tell them what documents they need to bring with them, reducing the number of return trips. About half of those who called for an appointment resolved their issue without actually having to come in for an appointment.

In February 2018, the IRS implemented a new appointment scheduling tool which has further enhanced its ability to provide appointments. While the IRS encourages taxpayers to make appointments in advance, so they can be assured of quick and efficient service, it attempts to serve taxpayers who show up without an appointment.

The IRS provides a wealth of tax information on *IRS.gov*. In late summer 2017, it launched a redesigned *IRS.gov* website. The refreshed design improves how taxpayers interact with the IRS online. While tax issues can often be complex, the *IRS.gov* transformation should make it easier for taxpayers to navigate both the IRS website and tax law. One of the most important changes was to make *IRS.gov* mobile friendly. This means the site will resize and adapt based on the screen size or the type of device used, including a smartphone, laptop, tablet, or desktop.

The new *IRS.gov* also improved content organization, highlighting the important tasks taxpayers come to *IRS.gov* to complete. Several links at the top of the pages give users one-click access to help, news, content in other languages, and more. In addition to reorganizing content, *IRS.gov* now has drop-down menus on every *IRS.gov* page for those using a computer web browser. Each drop-down menu groups popular content options to eliminate scrolling—giving users quicker access to the information they need. We monitor how *IRS.gov* is performing, and user reactions, to better serve taxpayers and their representatives.

The IRS has invested significant resources in developing a series of online tools and applications so that those who prefer to interact with the IRS online can do so easily and securely. The plan is to continue investments in online tools and offerings and modernizing the taxpayer experience. Here are several key online applications the IRS has developed in response to increased taxpayer demand for online services:

- “Where’s My Refund?”, an electronic tracking tool, is the most heavily used part of our website. Taxpayers used it about 278 million times in FY 2017, and already been used more than 275 million times this fiscal year.
- Get Transcript, which allows taxpayers to go online, verify their identity with strengthened security, and download a copy of their tax records from prior years. Taxpayers used this tool 15.5 million times in FY 2017 and 9.6 million times so far in FY 2018.
- Online Payment Agreement, a secure, safe, and easy process taxpayers can use to set up a payment plan and pay their tax obligations over time. A total of 798,000 online agreements were set up in FY 2017, and 571,000 have been set up so far this fiscal year.
- Direct Pay, which provides taxpayers with a secure, free, quick and easy online option for making tax payments. This tool was used 10.2 million times in FY 2017 and has been used 6.6 million times this fiscal year. The IRS is also continuing the development of online accounts at the IRS where taxpayers can log in securely, obtain the information they need about their account and interact with the IRS as needed.

In 2016, the IRS took the first step toward a fully functional IRS online account with the launch of an application on *IRS.gov* that provides information to taxpayers who have straightforward balance inquiries. The IRS followed that up with another feature that lets taxpayers see recent payments posted to their account.

Question. How will IRS achieve similar results during the 2019 filing season to help taxpayers understand new requirements resulting from the tax law changes?

Answer. For filing season 2019, the IRS will continue the Get Ready campaign to provide the latest information to taxpayers. To reach as many people as possible, the IRS is using a variety of communications and outreach platforms. In January 2018, it started with the release of the withholding tables. The IRS followed up with the Withholding Calculator launch in February. For March, the IRS created a special campaign, Paycheck Checkup week.

The IRS will expand our communications through filing season 2019, adding information about other parts of the TCJA as guidance is issued. IRS outreach, communications, and customer-facing employees, as well as external partners, will be equipped with the same messaging to generate awareness and consistently encourage taxpayers to consider actions outlined on *IRS.gov* and Get Ready campaign.

Based on anticipated volumes, IRS will ensure that a sufficient number of CSRs are available to answer taxpayer questions and that all CSRs and all assistants in our TACs are trained on the new tax law. In addition, IRS will answer tax reform tax law questions year-round, not just during filing season.

The IRS will provide additional online tool enhancements as they are developed and tested with taxpayers and tax professionals. The IRS will continue to expand its outreach and communications effort through the summer and for the rest of 2018 so that taxpayers are informed before the start of the 2019 filing season. A critical piece of the strategy is working with third parties to help them share this information. During this summer, the IRS will conduct sessions across the country, reaching taxpayers and tax professionals. Additionally, the IRS will again conduct its Nationwide Tax Forums for tax professionals in five cities around the country, where the new tax law will take center stage.

Question. There's been much discussion on the need for reforming and/or modernizing taxpayer services. However, at the same time, GAO recently noted that IRS's core tax processing system is over 50 years old, relies on archaic software, and is highly risky. GAO also noted that there is not a solid plan with realistic costs and milestones to replace the core tax processing system.

How is IRS balancing the need to reform and/or modernize taxpayer services while ensuring the critical internal systems supporting these taxpayer services are also appropriately modernized?

Answer. Delivering new services and modernizing existing services provided to taxpayers are both dependent upon our ability to stabilize and enhance our existing IT infrastructure and operations. In implementing modern technology and methods, the IRS will simultaneously improve the taxpayer experience and effectively advance modernization of IT infrastructure and operations. As efforts to modernize continue, the IRS will upgrade the currency of existing hardware and software, increasing redundancy, eliminating single points of failure, and building an IT workforce with the requisite skills. Success will be based upon effectively leveraging all resources and available sources of funding.

In several instances, modernizing services for taxpayers has included modernizing the internal systems supporting those services. One example in particular worth noting is the progress on the CADE 2 program to modernize the Individual Master File (IMF) core tax processing system. Through the CADE 2 program, the IRS has delivered significant improvements to taxpayer services, with faster refunds, notices, and broader, agency-wide availability of more current taxpayer information. Through CADE 2, the IRS is also addressing technical limitations imposed by the antiquated Assembly Language Code (ALC).

While we have many successes in delivering both modernized taxpayer services and modernized systems and infrastructure, the IRS has a great deal of work ahead of us. Modernization is a continuous process, and the IRS is taking every opportunity to leverage all available resources—not just Business Systems Modernization (BSM)—to continue to make progress. The IRS is enhancing our strategic planning processes and changing its approach to better integrate scheduled systems upgrades while implementing legislative mandates and BSM initiatives into an overall modernization strategy. The IRS is confident that this holistic approach will accelerate

modernization and ensure all investments are planned and executed according to the IRS Strategic Plan.

Question. Recently, IRS officials have made public comments questioning the usefulness of the Form 990 Schedule B from organizations formed under IRC section 501(c)(4) or (6), and acknowledging the risks that Schedule B filing poses to confidentiality. Given that this requirement, unlike that on organizations formed under IRS section 501(c)(3), comes from IRS and Treasury rulemaking rather than the IRS, will IRS be reconsidering the requirement that 501(c)(4) and (6) organizations file a Schedule B?

Answer. On July 16, 2018, after careful review, the IRS and Department of the Treasury released Revenue Procedure 2018–38 limiting the requirement to file names and addresses on Schedule B to organizations described in section 501(c)(3) or section 527 of the Internal Revenue Code.

QUESTIONS SUBMITTED BY HON. RON WYDEN

OFFICE OF TAX POLICY COMMENTS ON TAX RECONCILIATION

Question. During the consideration of the 2017 tax reconciliation bill, did the Office of Tax Policy or others at Treasury submit written comments to Congress? If so, and if such comments were not specifically submitted to the Senate Finance Committee Minority staff, please provide copies.

Answer. The IRS Office of Congressional Affairs-Legislation Branch did not provide written comments to Congress on the Tax Cuts and Jobs Act during its consideration.

CONSERVATION EASEMENT SYNDICATION

Question. Mr. Kautter, on March 29, 2017, I wrote to IRS Commissioner John Koskinen about the growth in abusive tax shelters involving the syndication of conservation easements. I asked the IRS to provide a report on the nature and scope of this problem. On July 13, 2017, the IRS provided a partial response that revealed participants in these syndication deals claimed deductions that were nine times the amount of their original investment. Subsequent preliminary responses indicate IRS may have lost billions of dollars to this tax shelter in hundreds of tax shelter transactions.

The Treasury Department issued Notice 2017–10, identifying these syndication transactions as abusive tax shelters and requiring participants to disclose their involvement to the IRS. The notice was also intended to deter future deals, however, media reports suggest these deals are still taking place.¹

Historically, when the Treasury Department and IRS issue a notice “listing” a certain transaction as an abusive tax shelter, the promotion and use of such schemes stops. Can you confirm whether this activity is continuing despite the notice?

Answer. Current data suggests that the number of transactions has declined since the issuance of Notice 2017–10. The IRS, however, continues to receive additional disclosures, and it is still in the process of reviewing the disclosures received in 2018. As of May 31, 2018, the IRS has processed 552 of the 2018 Forms 8886 for this transaction and 1,928 Forms 8918. While forms continue to be processed, the current ratio from the 310 2018 Forms 8886 filed that provided both an investment and deduction amount is 4.91.

Question. Please describe whether the administration has taken enforcement actions against the promoters of these abusive shelters identified via Notice 2017–10.

Answer. Approximately 40 of the top-tier pass-through entities (*i.e.*, the entity where the contribution transaction occurred, generally TEFRA partnerships) have open enforcement activity.

Question. Please describe whether the administration has developed plans to take any enforcement actions against the promoters of these abusive shelters identified via Notice 2017–10.

Enforcement actions against illegal syndicated conservation easement tax shelter transactions have proven challenging and time-consuming for the IRS. For example,

¹ Peter Elkind, “The Billion-Dollar Loophole,” *ProPublica*, December 20, 2017.

earlier this month the Tax Court issued a ruling disallowing tax write-offs from a sham conservation easement transaction that occurred more than a decade ago.² While Notice 2017–10 may have extended the statute of limitations period for certain transitions, the time in which IRS can take enforcement actions on those tax shelter transactions grows shorter by the day. Please describe what actions IRS is taking to ensure that promoters of syndicated conservation easement tax shelter transactions are held accountable before the close of the statute of limitations.

Answer. The IRS is determining its specific enforcement strategy, which will also address entities that failed to properly disclose pursuant to the notice. The information included in the disclosures, as well as experience with current inventory, shows the need for a varied approach for this issue.

Question. Do you believe IRS currently has the tools needed to put an end to this abuse? Will Treasury propose regulatory or statutory changes to address these abuses if Notice 2017–10 and other tools are shown to be insufficient to curb the use of these tax shelters?

Answer. Enforcement in this area requires the significant assistance of appraisers and resources. The IRS is working to address this issue and will evaluate the results from its enforcement strategy and work with Treasury if additional regulatory or statutory changes are needed to curb misuse of the syndicated conservation easements.

Question. As Acting Commissioner, how high of a priority is it for IRS to stop this abuse?

Answer. The IRS is committed to pursuing those transactions that are abusive.

Question. Do you believe the transactions described in Notice 2017–10 are abusive on their face?

Answer. Notice 2017–10 sets forth that a transaction that results in a charitable deduction that equals or exceeds an amount that is 2½ times the amount of the investor's investment is a tax avoidance transaction.

Question. To what extent will IRS challenge the tax benefits of each and every transaction covered by Notice 2017–10?

Answer. As stated above, IRS's experience with current inventory shows the need for a varied approach for this issue. The IRS is determining its enforcement strategy.

Question. As Assistant Secretary for Tax Policy, do you support Notice 2017–10?

Answer. Yes. Notice 2017–10 alerts persons involved in syndicated conservation easement transactions that disclosure responsibilities may arise from their involvement in the transactions. The Internal Revenue Service uses these disclosures as a significant tool in carrying out its enforcement responsibilities.

NEW TAXES ON TAX-EXEMPTS AND CHARITIES

Question. Mr. Kautter, the Republican tax bill³ passed in December 2017 imposed nearly \$10 billion in new taxes on charities and tax-exempt organizations. Many of these provisions were carelessly drafted, leaving charities and other tax-exempt organizations uncertain how the provisions will be implemented and how much tax they will have to pay. One of the most pressing sources of uncertainty is section 13702 of the Republican tax bill, which requires tax-exempt entities to calculate unrelated business income tax (UBIT) separately for each trade or business. The provision, however, failed to make any attempt to define "trade or business," causing significant confusion and uncertainty for charities and other tax-exempt organizations across the Nation.

Earlier this week the American Institute of Certified Public Accountants (AICPA) sent a letter to congressional leaders stating that section 13702 of the Republican tax bill would be difficult or impossible to comply with without significant regulatory guidance from Treasury. The letter states: "The burden of new section 512(a)(6) on tax-exempt organizations is substantial, and nearly all tax-exempt organizations are affected." This issue is further complicated by the fact that the provision went into effect January 1, 2018, just days after it became law. Charities and

²Tax Court Memorandum 2018–45.

³H.R. 1, an act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.

other tax-exempt entities are in the process of making 2018 estimated tax payments, and are left guessing how to calculate the new tax.

Did Treasury or IRS know that this provision as drafted would cause uncertainty to charities and other tax exempt entities without further regulatory guidance?

Answer. The Department of Treasury was in communication with Congress throughout the legislative process for H.R. 1 and is working diligently to implement the legislation. The Department of Treasury and the IRS appreciate the need for guidance that clarifies outstanding issues relating to newly enacted section 512(a)(6). The Second Quarter Update to the 2017–2018 Priority Guidance Plan includes guidance on the computation of unrelated business taxable income for separate trades or businesses. This guidance is one of the IRS's top priorities.

Question. Did Treasury or IRS believe at the time of the Republican tax bill's passage that they would be able to issue regulations fully clarifying this issue before the provision went into effect on January 1, 2018?

Answer. The Department of Treasury was in communication with Congress throughout the legislative process for H.R. 1 and is working diligently to implement the legislation.

Question. Did Treasury or IRS believe at the time of the Republican tax bill's passage that they would be able to issue regulations fully clarifying this issue before the first 2018 quarterly estimated tax payment was due?

Answer. The Department of Treasury was in communication with Congress throughout the legislative process for H.R. 1 and is working diligently to implement the legislation.

Question. Did Treasury or IRS communicate to the chairmen of the Senate Finance Committee or Ways and Means Committee (or their staffs) that this provision as drafted could cause uncertainty to charities and other tax exempt entities?

Answer. The Department of Treasury was in communication with Congress throughout the legislative process for H.R. 1 and is working diligently to implement the legislation.

Question. If yes, did Treasury or IRS suggest modified statutory language to further clarify the provision? Was any proposed language adopted in the final legislation?

If no, why did Treasury not communicate to Congress any concerns over the uncertainty this provision would cause?

Answer. See above.

MINIMUM STANDARDS FOR PAID TAX RETURN PREPARERS

Question. We continue to hear reports of unscrupulous tax return preparers preying on vulnerable taxpayers and pocketing the money. This is why Senator Cardin and I introduced legislation to allow the IRS to require minimum standards for paid return preparers. Since the 1970s, Oregon has had minimum standards in place for tax preparers since the 1970s, and when GAO looked at the program, it found that returns filed by Oregon paid preparers were 72 percent more likely to be accurate than comparable returns filed in another State. Consequently, GAO has been recommending for years that the IRS set minimum requirements for paid preparers.

Mr. Kautter, do you still see preparers taking advantage of taxpayers as a problem?

Answer. Yes, there are still preparers taking advantage of taxpayers. Whether the preparer is unscrupulous or just underprepared the outcome for the taxpayer and tax administration is much the same—a lack of compliance with tax obligations. To improve overall tax compliance, the IRS continues to support minimum standards for tax return preparers, as this will improve preparer competency and return preparation accuracy.

Question. Do you support legislation that would require minimum standards for paid preparers to protect taxpayers, such as was proposed in the President's budget?

Answer. Yes. Such legislation would enable the IRS to ensure that all preparers have a basic level of competency and integrity. Additionally, greater oversight for return preparers would help the IRS identify unscrupulous preparers and develop more effective compliance and enforcement strategies.

CYBER-ATTACKS ON IRS SYSTEMS

Question. Your predecessor, Commissioner Koskinen, testified before the Finance Committee in April 2016 that IRS computers “withstand more than 1 million malicious attempts to access them each day.”

Mr. Kautter, can you confirm for the committee whether the rate of cyber-attacks on IRS systems has increased to 2.5 million per day, as reported in *Politico* on April 10, 2018, and whether taxpayer data or IRS operations are at risk?

Answer. The IRS observes and mitigates more than 2.5 million unauthorized access attempts per day (>1 billion per annum), including denial-of-service attacks, unsuccessful intrusion attempts, probes or scans, and other unauthorized connectivity attempts. To date, the multi-layered defenses the IRS has in place have been extraordinarily effective in most cases. The bulk of these attempts have, presented minimal risk of exposure of taxpayer data and IRS operations.

Question. What is the IRS doing to combat these attacks?

Answer. The IRS continues to leverage congressionally provided funds to implement a multi-layered defense strategy. To date, the strategy has been successful, but the IRS is mindful that bad actors’ evolving tactics mandate continual investment in defense.

The IRS has established 24 x 7 x 365 incident response capability with teams that perform around-the-clock intrusion and fraud analytics to identify, respond to, and mitigate emerging threats or fraudulent access/transactions. These employees are highly skilled across the realms of intrusion analysis, fraud analytics, and data analytics in general, with a very diverse skillset across the spectrum of cybersecurity.

The IRS leverages myriad integrated technologies and processes to provide proactive mitigation, timely detection, and rapid containment/response to identified cyber-threats. Collectively, the IRS’s enterprise security stack delivers safeguards and monitoring across disparate threat vectors ranging from publicly accessible applications to endpoint devices. A snapshot of the enterprise security stack consists of the following:

- Perimeter-based security infrastructure, which is comprised of firewalls, intrusion detection/prevention sensors, internet proxy and email gateway content filtering, and Einstein 3 Accelerated. Collectively, these infrastructure components enforce traffic policy to permit connectivity that is explicitly authorized, while prohibiting all other connectivity.
- IRS’s Publicly Accessible Internet websites, which have dedicated security protections in place to authenticate users in a manner commensurate with the data being accessed, traffic shaping and web application firewalls to ensure accesses are compliant with protocol standards, and denial of service protections to mitigate excessive volume-based target attacks.
- Endpoint Protections, which serve as an additional line of defense through standardized common operating environments, antivirus and firewall to prevent split tunneling, patch/vulnerability analysis and remediation, software license metering and endpoint health monitoring to ensure applicable endpoint agents are operational and current.
- Analytics and monitoring, which occur across the enterprise security stack using the big data ecosystem to provide normalization, aggregation, and correlation of datasets. Analysts can interrogate the data to answer specific questions and/or glean new insights or trends from the data.

Question. What can Congress do to assist?

Answer. Congress can assist by funding the requests for cybersecurity initiatives in the 2019 budget. Approval of streamlined critical pay for technology positions is one of the most impactful steps Congress could take.

FAILURE OF IRS E-FILE ON TAX DAY

Question. Mr. Kautter, we would like to get a full accounting of the circumstances behind the failure of IRS systems to accept electronically filed returns that occurred early in the morning on April 17th. The outage lasted 11 hours, with few details provided in the interim to the public and no direction given to taxpayers needing to file their returns.

As part of this accounting, can you tell us whether it is correct that this was simply a glitch in a piece of IRS hardware and not the result of interactions with any third parties? Is it correct that no taxpayer data was lost or compromised in any way? Has the backlog of transmitted-but-not-accepted returns since been processed by IRS? What specific processes have been put in place to ensure this type of outage will not happen again, especially on one of the busiest days of the tax filing season?

Answer. Addressing your specific questions first:

- As described in greater detail below, a firmware bug caused the mainframe to fail on Tax Day. The outage did not result from third-party actions.
- The IRS did not lose or compromise any taxpayer data as a result of this outage.
- The IRS processed the backlog within 24 hours of restoring the mainframe.
- IBM and IRS deployed a script to find and automatically correct this storage array problem should it recur.

Details and background:

The circumstances around the failure of IRS systems on April 17th are as follows. At approximately 2:57 a.m. EST on April 17, 2018, the IRS's core tax processing mainframe system used its automated "call home" capability to send an "alert" to the vendor, IBM, when it detected a deadlock condition after a warm start (system reboot initiated by the operating system). It sent a second automated alert to IBM at 4:45 a.m. EST. Meanwhile, at 2:24 a.m. EST, IRS's Information Technology Operations Command Center (ITOC) began receiving system-generated messaging and invoked our established processes to troubleshoot the problem. By 3:30 a.m. EST, IRS ITOC had detected problems with several systems and submitted a work ticket. By 5:15 a.m. EST, IRS ITOC was in communication with the vendors (IBM and Unisys), and technical assessments had begun. Extensive troubleshooting and system diagnostics testing by a joint IRS, IBM, and Unisys team revealed an extremely rare hardware failure caused by a firmware bug on the storage array (a subsystem component of the mainframe). A unique set of workload and timing conditions prevented deletion of data from the read cache (temporary memory), causing the cache to fill up. As a result, the system was unable to service any new requests for read or write cache, resulting in a deadlock condition that halted mainframe processing.

IBM product engineers cleared the deadlock condition on the storage array and then deployed a prevention script (temporary hardware instructions) to automatically run if any deadlock conditions were to occur again. By mid-afternoon on April 17, 2018, the mainframe was fully operational and, shortly thereafter, tax and payment processing resumed. Within 24 hours, the IRS had fully recovered and was current with processing, with no data corruption, data loss, or system breaches associated with this event. There have been no further occurrences of the deadlock condition.

While the IRS cannot guarantee that a rare hardware outage will never happen again, it has spent significant time assessing how we could reduce the effects of a similar failure. The IRS has worked with its vendors to improve the incident response and notification process. The IRS is also exploring options for increasing availability of mainframe systems. In accordance with our most recent IT Vision, the IRS is actively exploring solutions that will provide onsite resiliency to enable High Service Availability for our systems. The IRS is also considering ways to accept electronically-filed tax returns and payments independent of the mainframe systems to minimize risk should another mainframe interruption occur. Because the current backup system for an event of this magnitude requires considerable time to become operational, the IRS needs to invest in more failover options to increase mainframe systems availability.

Question. And what new procedures will IRS implement (including postings on social media) to ensure that taxpayers and government officials are kept abreast of developments and given the timely direction they need to file their tax returns and comply with tax laws?

Answer. The IRS released a variety of public messaging on April 17, 2018, informing taxpayers of the outage and providing direction on how taxpayers should file their tax returns.

This included a widely circulated mid-morning press statement and televised comments from the Acting Commissioner during the House Oversight and Government Reform Committee hearing. IRS issued a Quick Alert at 8.48 a.m. By mid-morning

April 17th, the IRS had also sent e-filing software providers the following message: “Currently, a number of IRS systems are experiencing technical difficulties. The IRS is looking into the issue and will provide updates as soon as possible. Taxpayers should continue filing their tax returns as they normally would.” The IRS added outage messages to affected tools on *IRS.gov*. On IRS telephones, the IRS instructed our toll-free representatives how to respond to questions from callers. In addition, the IRS issued internal alerts under our Servicewide Electronic Research Program on both April 17th and 18th to internal audiences, which includes IRS Accounts Management and Field Assistance personnel, with messaging similar to the public messaging.

During the afternoon on April 17th, the IRS began to publicize the filing deadline extension until midnight on Wednesday, April 18, 2018. This message was shared as quickly as possible. The IRS shared the announcement of the extension widely through a national news release, on *IRS.gov*, on Twitter, and through the news media and national tax association and partner groups, to ensure wide awareness of the additional day to file.

The IRS is looking for ways to focus additional attention on these sorts of issues should they occur in the future, including higher profile messaging on the front page of *IRS.gov* and wider use of social media.

529 PLANS

Question. As you know, the new tax law expanded IRC section 529 plans to allow for qualified distributions from these plans for K–12 education expenses. These distributions can be made directly to the school, the student or the parent and are limited to \$10,000 per student per year. I am concerned that current practices do not allow for proper oversight of this expansion.

As you are aware, 529 plans are required to provide taxpayers receiving distributions and the IRS a Form 1099–Q recording the amount distributed from the plan that year. Qualifying colleges and universities are required to provide a Form 1098T to both the taxpayer and the IRS which report the expenses that were paid to the respective institution by the taxpayer for that year. This data is not collected or included on the annual Form 1040. Instead, taxpayers are only required to self-report to the IRS on Form 1040 when there are non-qualified distributions or distributions in excess of qualified expenses.

How many individual tax returns were flagged and/or caught on audit each year for the past 3 years for reporting violations of 529 plan contribution rules? Please also provide the dollar amounts of these violations?

Answer. The IRS is unable to provide this information, as its systems do not capture this information. Such income would be reported on Form 1040 as “Other Income,” which may include other types of income.

Question. Does the IRS match or track the 1098–T or 1099–Q information with the information that is filed by the corresponding taxpayer or is this only manually matched if the taxpayer is audited?

Answer. The IRS currently matches both Forms 1098–T received from qualifying colleges and universities and Form 1099–Q from either a 529 or 530 education plan.

Question. With the expansion to K–12 education expenses, how does the IRS intend to ensure that taxpayers are not taking distributions in excess of \$10,000 per student per year? Similarly, how does the IRS intend to ensure that multiple taxpayers are not claiming the same student? For example, parents and grandparents both claiming the same child up to the maximum amount of \$10,000 would be claiming \$20,000 in qualified distributions.

Answer. The IRS is currently considering options to address the additional compliance issues generated by the expansion of qualified expenses to K–12 education and the associated limitations. The ability of multiple taxpayers to claim tax-free distributions relating to the same beneficiary existed under the prior law.

Question. How does the IRS intend to determine the qualifying expenses for K–12 educational institutions for matching purposes since these institutions do not file a 1098–T with the IRS or the taxpayer?

Answer. Form 1098–T is filed under the authority of IRC section 6050S. The filing of this form does not apply to IRC 529 under either prior or present law. Because the IRS will not have the information on Form 1098–T available, it deter-

mines qualifying expenses through a manual process if the return is audited and the issue warrants examination.

Question. Many States that provide State income tax deductions are claiming that their State laws must be modified to come into compliance with the Federal law so their taxpayers will be able to continue to contribute to the same 529 plan. For example, a State has defined eligible 529 contributions to their plan to “colleges or universities” without a reference to IRC section 529 so the change in IRC section 529 for eligible expenses is not controlling. In these cases, can the IRS provide guidance that States do not have to participate in 529 plans and that the changes to 529 plan rules as contained in H.R. 1 are not mandatory on the States. In other words, States do not have to change their laws so their citizens can continue to contribute to their 529 plans as they were able before the change in law.

Answer. Public Law 115–097 expanded the definition of “qualified higher education expense” for IRC section 529 to include tuition expenses at or below the \$10,000 tax-year ceiling for K–12 schools. This expanded definition is applicable for Federal income tax purposes regardless of how States elect to manage their 529 plans. A State’s decision to participate in 529 plans or the deductibility of contributions to such plans will not impact the qualification of distributions for Federal tax purposes. The law did not modify the allowable contributions to 529 plans or related deductions provided by the States. Additionally, on July 30, 2018, The Internal Revenue Service and Department of the Treasury announced their intent to issue regulations on three recent tax law changes affecting popular 529 education savings plans.

Question. Are there any recommendations forthcoming from IRS for changes in law or technical corrections to ensure that taxpayers are compliant with the rules for the new expansion for K–12 expenses?

Answer. Not at this time.

QUESTIONS SUBMITTED BY HON. JOHN THUNE

Question. One of the biggest issues facing South Dakotans when it comes to their Federal taxes has been the problem of tax-related identity theft. This not only affects those who have their identity stolen, but also those who find their refund delayed while the IRS verifies their identity. I was pleased to see the IRS’s new partnership with the Federal Trade Commission to provide taxpayers with an online portal to report instances of tax-related identity theft.

Can you give us an update on the IRS’s efforts to improve its defenses and help taxpayers fight ID theft?

Answer. Refund fraud caused by identity theft (IDT) is one of the biggest challenges facing the IRS today, and the harm it inflicts on innocent taxpayers is a problem the IRS takes very seriously. The IRS has a comprehensive strategy focusing on preventing refund fraud, investigating these crimes, and assisting taxpayers victimized by tax-related IDT. Through the Security Summit, an unprecedented partnership between the IRS, the software industry, and the States, the IRS continues a unified battle against identity theft and works on collaborative solutions to combat stolen IDT refund fraud. IRS data shows significant improvements as fewer identity theft returns entered the tax system, fewer fraudulent refunds were issued, and fewer taxpayers were reporting themselves as victims of identity theft. The number of taxpayers reporting to the IRS that they are victims of identity theft continues to decline, it’s fallen nearly 65 percent between 2015 and 2017. Also, during the 2015–2017 period, the number of confirmed identity theft tax returns fell by 57 percent with more than \$20 billion in taxpayer refunds being protected.

As identity thieves evolve to become more sophisticated, the IRS has tightened its security in response to the increased threat. The IRS is making it harder for identity thieves to successfully masquerade as taxpayers and file fraudulent refund claims on behalf of these taxpayers. The IRS and partners recognize that large data breaches of personally identifiable information (PII) are difficult and frustrating for the victims and financial ecosystem. Large-scale data breaches are a reminder of the value of data for fraudulent purposes and identity theft. Over the last several years, the IRS IDT fraud filtering processes have remained effective even in situations of large losses of PII.

The IRS continues to endeavor to strike the necessary balance between preventing identity theft and ensuring that legitimate refunds are released quickly. The IRS

implemented strategic initiatives to assist tax preparers with authenticating their clients who have been victims of a data breach, as well as identifying refunds that can be released quickly, based on specific criteria. To stop fraudulent refunds from being paid, the IRS continually conducts analyses and looks for ways to improve and fine tune identity theft and fraud detection filters, as well as reduce the false detection rate. If the filter's selection criteria result in lower accuracy or performance, they may be revised or retired to minimize taxpayer burden.

The IRS uses several primary tools to combat tax-related identity theft and fraud. This includes tools specific to addressing taxpayers who have been victims of a data loss of Federal tax information (FTI). Data losses involving FTI can be used to file returns that appear to be coming from the true taxpayer. IRS models and filters continue to be modified to address the level of sophistication used to file these fraudulent returns. The IRS has implemented the use of Dynamic Selection Lists, allowing the IRS to monitor specific accounts of taxpayers who have been victims of an FTI data breach when the data compromised would have a direct impact on Federal tax administration. In doing so, the IRS is able to identify these suspicious returns more effectively, resulting in better protection for taxpayers' Federal tax accounts and increased revenue protection.

In addition, there are multiple points in the return processing lifecycle to identify, prevent, and assist possible IDT victims: pre-filing, at filing, and post-filing.

To prevent IDT returns from ever coming in the door (pre-filing), the IRS worked with tax software providers to improve the procedures that their new and returning customers must use to identify themselves. This minimizes the chance that the taxpayer's software provider's account can be taken over by identity thieves. This additional security is one of the most visible signs of increased protection to taxpayers because they will notice password requirements and other website security features.

To prevent taxpayers impacted by tax-related identity theft from becoming a repeat victim, the IRS issues an Identity Protection Personal Identification Number (IP PIN). The IP PIN authenticates the return received as belonging to the taxpayer.

The IRS has also implemented a variety of mechanisms to prevent criminals from using a deceased individual's identity information to perpetrate fraud. The IRS routinely locks the accounts of deceased taxpayers and have locked more than 30 million accounts so far.

In addition, IRS has taken the following actions to prevent fraud and enhance cybersecurity:

- Sponsored the first Bureau-led Cybersecurity Community of Practice forum to enhance information sharing of Cybersecurity best practices. This led to two additional forums sponsored subsequently by the Mint and the Alcohol and Tobacco Tax and Trade Bureau.
- Established Identity Theft Tax Refund Fraud Information Sharing and Analysis Center (ISAC) that provides a public-private partnership for participants to collaborate and share information; to detect and deter identity theft tax refund fraud; and to protect taxpayers.
- Implemented network protection capability that blocked transmission of over 196,000 un-encrypted emails from leaving the IRS network, preventing the possible disclosure of sensitive data such as social security numbers and passwords.
- Implemented and leveraged multiple cybersecurity threat countermeasures to prevent malware from being accessed or installed within infrastructure assets.
- Expanded the Integrated Enterprise Portal (IEP) environment security protections and tools that significantly improved the detection and remediation of attempted external attacks aimed at *IRS.gov* via automated scripts, bots, and suspicious and malicious Internet Protocol addresses. The layered security tools protect taxpayer facing applications at the earliest entry point of the IRS infrastructure, which is the edge of the security and portal environment.
- Implemented advanced analytics and fraud detection capabilities within the IRS IEP and eAuthentication environments to better protect access to the Get Transcript application.

- Enhanced monitoring and analytic capabilities through investments in infrastructure, tools, and development expertise to accelerate continuous data monitoring.

Question. Are there statutory changes that Congress needs to make to help you in those efforts to protect American's tax data and minimize the risk of tax-related identity theft?

Answer. The IRS appreciates the recent action of Congress enacting legislation requiring the accelerated filing dates for certain information returns.

Currently, under Internal Revenue Code sections 6011(e) and 6724, taxpayers that file 250 or more information returns, including Forms W-2, must file them electronically. The IRS uses this external third-party information, plus internal historical taxpayer filing data, business rules, and sophisticated algorithms, to identify potentially improper and erroneous refund claims, including tax-related identity theft.

Question. The PATH Act required that the IRS delay refunds until February 15th for returns that claim the Earned Income Tax Credit or the refundable Child Tax Credit in order to reduce fraud and improper payments. Additionally, the PATH Act required employers to file their copies of Forms W-2, W-3 and 1099-MISC for non-employee compensation by January 31st, rather than the end of February (or March if filing electronically) under prior law.

With 2018 being the second year that the refund delay has been in place, can you share with the committee any assessments of these new requirements and your efforts to reduce fraud and improper payments with respect to the EITC and refundable Child Tax Credit more broadly?

Answer. The earlier availability of Form W-2 data enhances the IRS's defenses against identity theft and refund fraud. The IRS conducted systemic verification of information reported on taxpayers' returns against third party information reporting earlier, before issuing refunds. In addition, the IRS utilizes the earlier Form 1099-MISC for non-employee compensation information as a variable in the filtering process.

This filing season, the IRS leveraged both the Return Review Program (RRP), and the PATH Act refund hold to automate and expand the selection of potentially fraudulent returns. Through February 15th, the IRS identified approximately 312,000 returns claiming Earned Income Tax Credit (EITC) and Additional Child Tax Credit (ACTC) with potential issues with overstated income or withholding. Some employers may obtain short 30-day extensions based on certain exigencies and submit their information returns after the January 31st due date. If the information comes in later and the return information is verified, the refund will be released.

About 3.5 percent of EITC related refunds were held for additional pre-refund compliance review by the Income Verification Program. Additional returns could also be selected for identity theft and pre-refund audit.

Other strategies to reduce improper payments with respect to refundable tax credits include education, outreach, and compliance efforts. The IRS is exploring enhancements and improvements to our enforcement efforts, while balancing taxpayer burden. For example, the IRS created a Refundable Credit Operational Strategy, which documents existing refundable credit efforts and identifies potential new activities that could reduce improper payments. The IRS also hosted an EITC summit in June 2016, and a follow-up summit in September 2017. These summits provided us a wide variety of stakeholder perspectives on improving compliance.

Administering EITC represents a significant challenge for the IRS due to the nature of tax credits and the lack of available information to verify certain aspects of taxpayer eligibility at the time a return is filed. Many factors continue to serve as barriers to reducing overclaims in the EITC program. These include no single comprehensive government database or third-party data source that we can use to confirm all EITC eligibility requirements, complexity of the tax law; and declining IRS resources. These factors need to be addressed through legislative changes including error authority so an examination is not required to adjust EITC.

As detailed earlier, while the PATH Act provisions helped to reduce refund fraud with respect to refundable credits, further statutory authority is needed including correctable error authority to address issues at the time of filing and increasing the IRS's oversight authority over paid tax return preparers. The administration has proposed both in its FY 2019 budget.

How has the earlier availability of Forms W-2, W-3 and 1099-MISC for non-employee compensation enabled the IRS to improve its matching of tax data to reduce fraud and improper payments? Are there any specific results you can share with the committee?

Answer. *See* previous question.

Question. Are other statutory changes needed to help the agency stop improper refunds before they go out the door?

Answer. As detailed earlier, the IRS does not currently have correctable error authority to adjust erroneously claimed EITC based on the income discrepancies reported to the IRS. In addition, the IRS cannot address claims for the American Opportunity Tax Credit (AOTC) where a student has been claimed for more than the 4-year limit, has attended an ineligible institution, or did not attend at least half-time. Therefore, the IRS addresses these errors through audits, which require significant time and resources. The administration has proposed to increase IRS's authority to correct certain errors before refunds are issued.

The IRS appreciates Congress's enactment of legislation requiring accelerated filing dates for information returns.

Currently, under Internal Revenue Code sections 6011(e) and 6724, taxpayers that file 250 or more information returns, including Forms W-2, must file them electronically. The IRS uses this external third-party information, plus internal historical taxpayer filing data, business rules, and sophisticated algorithms, to identify potentially improper and erroneous refund claims.

In addition, increasing the authority to regulate paid tax return preparers, would help stop improper payments. Many taxpayers who claim these credits use professional tax preparers. If the IRS had the authority to ensure that paid preparers had certain minimal qualifications, that would improve the quality of returns that those preparers submit and thus, lower the number of errors that the IRS has to address in processing returns. The administration included a proposal in its FY 2019 budget.

QUESTIONS SUBMITTED BY HON. BILL NELSON

Question. As you know, in the wake of the hurricanes last year, the IRS delayed a number of reporting and filing deadlines. On behalf of Florida taxpayers, I want to thank the IRS for that relief. However, in response to a letter I sent the IRS following Hurricane Irma, the IRS said it could not halt its private debt collection program—which the National Taxpayer Advocate says often comes down hardest on low-income people already facing significant hardship.

Please explain why the IRS could not suspend its private debt collection program across the board for taxpayers in Federally declared disaster areas.

Answer. The IRS determines the debt collection relief to be granted based on an assessment of the impacted area. For catastrophic disasters that affect entire States/territories, the relief granted includes suspending collection activity for a specified period of time in the designated disaster area, including initiating contact with the taxpayer. The IRS marks the accounts of taxpayers with the type of relief granted based on the last filed return showing an address in the designated disaster area.

The IRS granted relief from collection activity following Hurricane Irma in Florida from September 4, 2017 to January 31, 2018 and in Puerto Rico and U.S. Virgin Islands from September 5, 2017 to January 31, 2018. On September 12, 2017, the IRS notified the public of expanded relief to any area designated by FEMA as qualifying for either individual assistance or public assistance in all 67 counties in Florida, <https://www.irs.gov/newsroom/tax-relief-for-victims-of-hurricane-irma-in-florida>.

The issued notice provides that: "Affected taxpayers who are contacted by the IRS on a collection or examination matter should explain how the disaster impacts them so that the IRS can provide appropriate consideration to their case." The private debt collection agencies are required to follow similar procedures to those that the IRS follows for debt collection. Thus, the private debt collection agencies were required to suspend all contact with taxpayers, cease all collection activity, and return the case to the IRS if a taxpayer requests relief verbally or in writing. The IRS alerts taxpayers through our press releases, postings on *IRS.gov*, and published guidance.

Question. I understand that the number of tax-related identity theft cases has declined in recent years, but criminals now have more information on us than ever before—with all the data breaches and privacy lapses that’s occurred in recent years.

What do you plan to do to stay on top of this crime and protect Americans from identity theft abuse or other scams, as criminals become increasingly sophisticated?

Answer. Refund fraud caused by Identity Theft (IDT) is one of the biggest challenges facing the IRS today, and the harm it inflicts on innocent taxpayers is a problem the IRS takes very seriously. To resolve IDT cases faster, the IRS centralized its IDT victim assistance policy, oversight, and campus case work under its new Identity Theft Victim Assistance organization. Benefits to this centralized approach include managing work using a common inventory system, reducing hand-offs between functions, improved case processing through streamlined, consistent procedures, and improved communication. In addition, the IRS resolves IDT cases faster using the toll-free hotline for IDT victims. All customer service representatives staffing this line are trained IDT specialists who can review the taxpayer’s case file and respond to the IDT victim’s call any time during business hours. For most cases, the average time to resolve a case is now less than 120 days. For more complex cases it can take up to 180 days to resolve. This is substantially less than a few years ago, when cases could take over 300 days to resolve.

In addition, IRS has taken the following actions to prevent fraud and enhance cybersecurity:

- Sponsored the first Bureau-led Cybersecurity Community of Practice forum to enhance information sharing of Cybersecurity best practices. This led to two additional forums sponsored subsequently by the Mint and the Alcohol and Tobacco Tax and Trade Bureau.
- Established Identity Theft Tax Refund Fraud Information Sharing and Analysis Center (ISAC) that provides a public-private partnership for participants to collaborate and share information; to detect and deter identity theft tax refund fraud; and to protect taxpayers.
- Implemented network protection capability that blocked transmission of over 196,000 un-encrypted emails from leaving the IRS network, preventing the possible disclosure of sensitive data such as social security numbers and passwords.
- Implemented and leveraged multiple cybersecurity threat countermeasures to prevent malware from being accessed or installed within infrastructure assets.
- Expanded the Integrated Enterprise Portal (IEP) environment security protections and tools that significantly improved the detection and remediation of attempted external attacks aimed at *IRS.gov* via automated scripts, bots, and suspicious and malicious Internet Protocol addresses. The layered security tools protect taxpayer facing applications at the earliest entry point of the IRS infrastructure, which is the edge security and portal environment.
- Implemented advanced analytics and fraud detection capabilities within the IRS IEP and eAuthentication environments to better protect access to the Get Transcript application.
- Enhanced monitoring and analytic capabilities through investments in infrastructure, tools, and development expertise to accelerate continuous data monitoring.

Question. Last year, I introduced the Identity Theft and Tax Fraud Prevention Act (S. 606), which grants the Treasury Department authority to oversee paid tax preparers, among other reforms to protect taxpayers from tax-related identity theft. Unfortunately, the paid tax preparer provision is considered controversial by some members of Congress. The provision, Section 115 of the bill, provides the following:

SEC. 115. MINIMUM STANDARDS FOR PROFESSIONAL TAX PREPARERS.

(a) IN GENERAL.—Subsection (a) of section 330 of title 31, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) establish minimum standards regulating—

“(A) the practice of representatives of persons before the Department of the Treasury; and

- “ (B) the practice of tax return preparers; and”, and
- (2) in paragraph (2)—
- (A) by inserting “or tax return preparer” after “representative” each place it appears, and
- (B) by inserting “or in preparing their tax returns, claims for refund, or documents in connection with tax returns or claims for refund” after “cases” in subparagraph (D).
- (b) AUTHORITY TO SANCTION REGULATED TAX RETURN PREPARERS.—Subsection (b) of section 330 of title 31, United States Code, is amended—
- (1) by striking “before the Department”,
- (2) by inserting “or tax return preparer” after “representative” each place it appears, and
- (3) in paragraph (4), by striking “misleads or threatens” and all that follows and inserting “misleads or threatens—
- “(A) any person being represented or any prospective person being represented; or
- “(B) any person or prospective person whose tax return, claim for refund, or document in connection with a tax return or claim for refund, is being or may be prepared.”.
- (c) TAX RETURN PREPARER DEFINED.—Section 330 of title 31, United States Code, is amended by adding at the end the following new subsection:
- “(e) TAX RETURN PREPARER.—For purposes of this section—
- “(1) IN GENERAL.—The term ‘tax return preparer’ has the meaning given such term under section 7701(a)(36) of the Internal Revenue Code of 1986.
- “(2) TAX RETURN.—The term ‘tax return’ has the meaning given to the term ‘return’ under section 6696(e)(1) of the Internal Revenue Code of 1986.
- “(3) CLAIM FOR REFUND.—The term ‘claim for refund’ has the meaning given such term under section 6696(e)(2) of such Code.”.

Does the administration oppose this provision? If so, please explain why and provide suggested changes to address any concerns you may have about the provision.

Answer. The administration’s FY 2019 budget includes a similar proposal to regulate paid tax return preparers. The above provision achieves the objective in the administration’s proposal.

Question. How will you work to ensure Public Law 115–97 (TCJA) will not provide a tax benefit to companies that outsource U.S. jobs?

Answer. The tax policies advanced in TCJA, including a reduction of the corporate tax rate and modernizing our international system of taxation, will place U.S. companies in a more competitive position with their foreign counterparts, and encourage investment, repatriation of funds, and job growth in the United States.

QUESTIONS SUBMITTED BY HON. MICHAEL F. BENNET

Question. Mr. Kautter, you and the IRS have a tall task ahead of you to implement the recently enacted tax legislation. I am very concerned that some of the provisions add significant complexity and uncertainty in ways that could lead both to an inability for businesses to invest until they understand the rules as well as significant revenue losses from gaming the system.

Do you have sufficient resources and authority to implement the tax legislation?

Answer. The IRS sincerely appreciates the funds, along with the multi-year authority and the flexibility to spread the funds between its appropriations, that Congress provided the IRS to implement TCJA. Based on the IRS’s initial analysis of the provisions and the associated requirements, the initial \$320 million allocation, along with the requested \$77 million in FY 2019, are sufficient for FY 2018 and FY 2019.

Question. How much additional funding do you think you will need?

Answer. At this time, this funding (\$397 million) is sufficient.

Question. What additional authorities would be helpful?

Answer. Streamlined critical pay authority. The IRS Restructuring and Reform Act of 1998 increased the IRS’s ability to recruit and retain a small number of key executive-level staff by providing the agency with streamlined critical pay authority. This allowed the IRS, with approval from Treasury, to move quickly to hire well-qualified individuals to fill positions deemed critical to the agency’s success that re-

quired expertise of an extremely high level in an administrative, technical, or professional field. Executives hired under this authority included the former Chief Information Officer, a senior cybersecurity expert, the system architect, the director of the online systems development team, and other senior IT executives. This authority expired at the end of FY 2013. The last appointment made under streamlined critical pay authority expired on September 29, 2017. Without this authority, the IRS continues to face challenges recruiting and retaining top-level talent, especially IT professionals who can help modernize its IT systems and protect taxpayer data from cyberattacks. The administration's FY 2019 budget proposes reinstating this authority through FY 2022.

Question. When do you think businesses will have the clarity they need to fully understand the implications of the tax law on their investing and hiring decisions? Can you give me a timeline on when you expect to be halfway done, 80 percent of the way done, 100 percent done?

Answer. The Department of the Treasury and the IRS appreciate the need for guidance that helps businesses determine the implications of the tax law on their investing and hiring decisions. We are working to provide guidance on these provisions as expeditiously as possible so that that taxpayers and tax practitioners may be aware of the changes in the new law and plan accordingly. The Second Quarter Update to the 2017–2018 Priority Guidance Plan contains specific timelines for the issuance of key guidance. Our goal is to issue guidance in at least proposed form on the most significant provisions of the tax reform bill by the end of this calendar year (2018).

Question. We are already being made aware of the ways that firms will game the pass-through deduction. Unfortunately, this was entirely predictable when the legislation was jammed through the Senate without a single hearing or significant debate on massively important provisions like the pass-through deduction. Even with that hasty consideration, academics wrote up dozens of ways this provision and others would be gamed.

Can you tell me what you are doing to prevent “cracking and packing,” where lawyers, doctors, and other high-income professionals who are not supposed to receive the deduction are shifting all of their profits into a separate entity that is eligible for the deduction?

Answer. The Department of Treasury and the IRS appreciate the need for guidance that clarifies outstanding issues relating to newly enacted section 199A. Proposed regulations under section 199A were released on August 8, 2018. The proposed regulations address “crack and pack” and propose a rule to prevent such strategies.

Question. Would you say that the pass-through deduction simplifies the tax code or makes it more complicated?

Answer. The IRS recognizes that all changes in law, including new tax provisions, involve a learning curve for those affected. The IRS and Department of Treasury are creating resources to assist taxpayers and tax practitioners in properly computing this deduction. In addition to the published guidance previously mentioned, the IRS is working on various communications, including revisions to forms, instructions and publications. Additionally, the IRS issued a Q&A along with the proposed regulations.

Question. As someone who has done a lot of tax planning yourself, do you think the pass-through deduction will reduce or increase tax planning activity?

Answer. As previously mentioned, all changes in law require some learning on the part of those affected. The Department of Treasury and the IRS are aware that taxpayers and tax practitioners are reviewing the new tax law provisions, reviewing their immediate impact and planning for the future. The IRS is working to provide guidance on these provisions as expeditiously as possible so that that taxpayers and tax practitioners may be aware of the changes in the new law and plan accordingly. Additionally, the proposed regulations mentioned above propose anti-abuse guidance to make certain that the rules are used appropriately.

QUESTIONS SUBMITTED BY HON. SHERROD BROWN

Question. The House of Representatives has passed the VITA Permanence Act, which would allow the IRS to fund the Volunteer Income Tax Assistance (VITA) pro-

gram with up to \$30 million using its own discretionary funds. According to the Congressional Research Service, the IRS collects about \$1 billion in miscellaneous fees that it can use however it wants.

What is the process by which the IRS decides how to direct those resources?

Answer. Congress establishes the funding level for VITA in the annual appropriation for Taxpayer Services. For example, \$15 million of the \$2.507 billion appropriated for Taxpayer Services in FY 2018 (Pub. L. 115–141) was designated for VITA grants, compared to \$12 million in FY 2015 (Pub. L. 113–235).

The IRS collects on average \$350 million in user fees annually and uses the budget authority from these fees to address high-priority business requirements including new legislation and preparations for the upcoming filing season, including taxpayer service activities. Over the last several years, the majority of the user fees have been allocated to critical IT operations necessary to implement and enforce legislative mandates, including the Patient Protection and Affordable Care Act, Foreign Account Tax Compliance Act, Trade Preferences Extension Act, and Achieving a Better Life Experience Act.

Question. If the VITA Permanence Act becomes law, will you work with my office to ensure this program has the funding it needs to carry out its services?

Answer. If the VITA Permanence Act becomes law, the IRS will work with the VITA partners to provide services to taxpayers.

Question. On the issue of Private Debt Collectors, according to the Taxpayer Advocate, 28 percent of taxpayers who have had their debts assigned to private collectors have incomes below \$20,000, and 44 percent have incomes below 250 percent of the Federal poverty level. The Taxpayer Advocate says you have legal authority to prevent collection on low-income taxpayers. Is that true, and if so, what steps is the IRS taking to shield low-income taxpayers from these collection efforts?

Answer. The Fixing America's Surface Transportation (FAST) Act, enacted in December 2015, requires the IRS to enter into qualified collection contracts for the collection of inactive tax receivables. The law is very specific about the types of cases that are excluded from the program. Accounts the IRS identifies as "currently not collectible" are not assigned to Private Collection Agencies (PCAs).

Excluding cases where the income reported on the tax return is below 250 percent of the Federal Poverty Level fails to consider that the taxpayer may have assets and, thus have an ability to pay. For this reason, the IRS has not excluded these cases from being assigned to a PCA.

Question. How are debt collectors instructed to prioritize collection? For instance, why are debt collectors targeting low-income individuals when underreported business income accounts for about twice the percentage of the tax gap as non-business income?

Answer. Section 32102 of the Fixing America's Surface Transportation Act (FAST Act) requires the IRS to use private collection agencies (PCAs) for the collection of outstanding inactive Federal tax debts. Under the FAST Act, IRS is required to assign accounts to PCAs where taxpayers owe money but the IRS is no longer actively working the accounts.

Under the FAST Act, the IRS cannot assign accounts to PCAs involving taxpayers who are: deceased; under the age of 18; in designated combat zones; victims of tax-related identity theft; currently under examination, litigation, criminal investigation, or levy; subject to pending or active offers in compromise; subject to an installment agreement; subject to a right of appeal; classified as innocent spouse case; and in presidentially declared disaster areas and requesting relief from collection.

PCAs are required to work the accounts as they are assigned to them. PCAs do not know the reason why the taxpayer has outstanding Federal tax debts. For example, the tax debt may be the result of the taxpayer filing a return but not paying the tax at the time of filing. The tax debt may be the result of a compliance action. PCAs only know the amount of the unpaid debt, the tax year, and information about the taxpayer.

The PCAs offer payment arrangements to taxpayers in a manner consistent with IRS installment agreement procedures for similarly situated taxpayers who call the IRS. As is the practice within the IRS, a taxpayer's proposal to pay is accepted without questioning the ability to pay if the case meets certain criteria.

If a taxpayer reports an inability to pay in full or through a payment arrangement for any reason, IRS procedures require the PCA to return the account to the IRS.

Question. On the issue of taxpayer service, according to the Taxpayer Advocate, the IRS is answering only 60 percent of taxpayer phone calls during this year's filing season, and is not answering questions after the filing deadline. From a funding perspective, what does Congress need to provide your agency so that taxpayers can have prompt, in-person help navigating the tax code?

Answer. The IRS achieved an 80-percent level of service on its phones during the 2018 filing season and projects achieving 75 percent for the full year. The resources requested for tax reform implementation will help ensure that the IRS can provide prompt help to taxpayers navigating the changes to the tax code during filing season 2019. In addition, Customer Service Representatives will be answering tax reform-related questions from taxpayers and representatives all year, rather than just in filing season.

QUESTIONS SUBMITTED BY HON. DEAN HELLER

Question. The Tax Cuts and Jobs Act represents a meaningful simplification and modernization of our outdated tax code. However, much work remains to be done to review existing and outdated regulations to ensure they do not place undue compliance burdens on individuals and businesses. One unduly burdensome regulation that still needlessly harms Nevadans is the current \$1,200 slot jackpot reporting threshold, which has been in place for approximately 40 years. Accounting for inflation, that number should be more than four times higher today—roughly \$5,000. Unfortunately, however, the threshold amount has remained static and, as a result, continues to impact many more of my constituents than was originally intended.

Are you willing to consider updating the current slot jackpot reporting threshold to reflect 4 decades of inflation?

Answer. As you know, the current \$1,200 threshold for reporting winnings from slot machine play was set in regulations published in 1977, despite the fact that section 6041 of the Internal Revenue Code, the operative statute, provided in 1977 (and currently provides) that, generally, a payment of income of \$600 or more made in the course of a trade or business is subject to information reporting. When the IRS published proposed regulations in 2015 to update the regulations for information reporting for bingo, keno, and slots, it asked for public comments regarding the feasibility of reducing the reporting thresholds to \$600 at a future time. The IRS received numerous comments in response to this request. Almost all of the comments recommended against lowering the thresholds, and many recommended raising the thresholds. None of the comments, however, provided information that could be used as a basis for raising the threshold or determining what a higher threshold should be. As there has not been congressional action on these thresholds in over 40 years and we have no basis on which to determine what a new threshold should be, the IRS finalized these regulations in 2016, retained the status quo, and did not change the reporting thresholds. Notably, the final regulations provide an optional aggregate reporting method and simplified payee identification requirements, both of which lessen the information reporting burden for the industry.

Question. I have long been a champion of policies that promote the development of alternative energy technologies like solar and geothermal, and I was instrumental in securing the enhanced solar investment tax credit (ITC) last Congress. However, while this provision was signed into law nearly 3 years ago, stakeholders in my home State of Nevada and across the country are still waiting to receive guidance on the qualification standard and phasedown. When can we expect to receive this guidance on the solar ITC?

Answer. The IRS issued guidance on the solar tax credit (Notice 2018-59) in June 2018.

QUESTIONS SUBMITTED BY HON. SHELDON WHITEHOUSE

Question. At the hearing, we discussed the IRS's role in combating foreign election spending. I asked about what the IRS does to prevent foreign nationals from laundering money through opaque LLCs or 501(c)(4) organizations and into our elections.

Thanks to Senator Wyden's inquiries, we have learned that the National Rifle Association (NRA) accepts foreign donations, although the NRA claims that none of those donations go toward political expenditures. The NRA told Senator Wyden "Our review of our records has found no foreign donations in connection with a United States election, either directly or through a conduit." Has the IRS investigated or is it investigating this claim?

Answer. As a general rule, section 6103 of the Internal Revenue Code (IRC) precludes the disclosure of whether the IRS investigated or will be investigating a particular taxpayer's conduct under the Internal Revenue laws.

Question. Section 501(c)(4) organizations are required to disclose their donors to the IRS. What does the IRS do with that information?

Answer. Treasury regulations require section 501(c)(4) organizations to include Schedule B, Schedule of Contributors, with annual information returns on Forms 990/990-EZ. This regulation also authorizes the Commissioner to grant relief from those requirements. On July 16, 2018, the Commissioner exercised his discretion with the publication of Revenue Procedure 2018-38 limiting the requirement to file names and addresses on Schedule B to organizations described in section 501(c)(3) or section 527 of the Internal Revenue Code. These organizations must continue to collect and keep this information in their books and records and to make it available to the IRS upon request, when needed for compliance purposes.

Question. What does the IRS do when a potential shell corporation is listed as a donor to a 501(c)(4)?

Answer. The IRS maintains or obtains information for use, as needed, in compliance matters. The Federal tax consequence of the characteristics of any corporate donor would depend on the facts and circumstances of the particular case.

Question. What resources do you devote to policing the rules about 501(c)(4)s?

Answer. The IRS administers and enforces the tax laws as in effect. The TE/GE FY 2018 Work Plan, dated September 28, 2017, sets forth the Exempt Organizations Division's FY 2017 accomplishments and its plan for FY 2018 to continue to be an organization whose key elements are "efficiency, effectiveness, and transparency."

Question. Question 15 of IRS Form 1024, the application for recognition of tax exemption, asks: "Has the organization spent or does it plan to spend any money attempting to influence the selection, nomination, election, or appointment of any person to any Federal, State, or local public office or to an office in a political organization?" Tax-exempt organizations are also required to report political activity annually on Form 990. Both forms are signed under penalty of perjury, 26 U.S.C. § 7206.

What is the process by which the IRS would initiate and pursue a false statements investigation under 26 U.S.C. § 7206?

Answer. The IRS follows processes set forth in the Internal Revenue Manual (IRM) to initiate a criminal investigation. See IRM 9.4.1, Investigation Initiation (March 2, 2008); IRM 25.1, Fraud Handbook; IRM 9.1.3.3.7.1, 26 U.S.C. § 7206(1) (False or Fraudulent Return, Statement, or Other Document Made Under Penalty of Perjury)—Elements of the Offense (May 15, 2008).

Question. Does the IRS review public FEC filings to see if organizations are reporting conflicting data regarding political spending?

Answer. Depending on the facts of any particular case, the IRS considers information that is necessary to determine if an organization meets the applicable requirements for tax exemption.

Question. If an organization says on a 1024 or 990 form that it has not engaged in any political activity or that it has no plans to, and you subsequently find out that it has engaged in political activity, is that sufficient to initiate a § 7206 investigation?

Answer. Evidence that a filer made a statement "which he does not believe to be true and correct as to every material matter" may lead to a § 7206 investigation. If an IRS function identifies a potential violation of § 7206, it follows established procedures to refer the case to IRS's Criminal Investigation Division. See Internal Revenue Manual 4.75.35.6, Criminal Referrals (August 19, 2016).

Question. Where there is an obviously false statement regarding political activity on a Form 1024 or 990, how does the IRS determine whether that statement rises to the level of materiality required under 26 U.S.C. § 7206?

Answer. In the given circumstances, the IRS reviews evidence whether a filer made a statement “which he does not believe to be true and correct as to every material matter.”

Question. Do you think there is something wrong where a group may be reporting millions of dollars in spending to the FEC, but zero to the IRS?

Answer. IRS administers and enforces the provisions of the Internal Revenue Code (IRC). The IRC and rules thereunder require information to be reported to the IRS on Form 1024 (now Form 1024-A) and Form 990 as necessary to determine whether an organization meets the applicable requirements. IRS is unable to confirm that Federal tax reporting requirements are the same as the reporting requirements of other agencies.

Question. Does the absence of bright-line rules for political spending by 501(c)(4) groups make prosecutions more difficult?

Answer. The IRS administers and enforces, and taxpayers are required to comply with, the tax laws as in effect. Section 501(c)(4) provides exemption, in part, for “[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.” An organization “is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community” (Treas. Reg. § 1.501(c)(4)-1(a)(2)(i)). The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office (political campaign intervention, or “PCI”) (Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii)). Although engagement in PCI is not prohibited for these organizations, the primary activities of organizations described in section 501(c)(4) must be the promotion of social welfare.

In addition, section 501(c)(4) organizations that engage in PCI may be subject to tax under section 527(f) on their exempt function expenditures. Whether an organization is engaged in PCI depends upon all the facts and circumstances of each case. Applicable rules contain examples illustrating facts and circumstances considered in determining whether activities are PCI. *See, e.g.*, Rev. Rul. 2004-6; Rev. Rul. 2007-41. The analysis reflected in these revenue rulings for determining whether an organization has engaged in PCI, or has expended funds for a section 527 exempt function, is fact-intensive. Generally, criminal prosecutions require proving willful evasion of the tax laws.

Question. Do you think there should be a bright-line rule?

Answer. The IRS will administer any statutory direction on this matter.

QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

IRS FUNDING/CUSTOMER SERVICE

Question. In FY 2019, the administration requested \$2.24 billion in the budget for taxpayer services—a cut of \$215 million.

What steps can the IRS take to the same level of customer service to taxpayers at a time of increased complexity, especially for pass through businesses, as a result of the 2017 tax bill?

Answer. The FY 2019 budget request was prepared prior to the enactment of TCJA and did not take into account the \$397 million the administration subsequently requested in FY 2018 for implementation and service requirements through FY 2019. The IRS plans to hire the necessary number of Customer Service Representatives (CSRs) to address the expected increase in call volume during filing season 2019. IRS is now answering tax reform tax law questions year-round, including questions on the new Qualified Business Income Deduction for pass-through businesses. IRS and the Department of the Treasury issued proposed regulations in August 2018, along with accompanying materials, to help businesses understand the new pass-through deduction changes.

Question. About 60 percent of customer service calls are handled by automated responses. The IRS also provides in person assistance at Taxpayer Assistance Centers (TAC's). For taxpayers who wish to talk to an IRS employee in 2019 during the next filing season, is there any plan to expand the network of TAC's so that taxpayers will have the resources and access to information they need to file their taxes under the new law?

Answer. The IRS continues to evaluate the needs and options for delivering services to taxpayers. We routinely review face-to-face Taxpayer Assistance Center (TAC) locations. During these reviews, we analyze taxpayer access to face-to-face service in the community and determine how to effectively meet taxpayer demand and preferences for service.

We also offer virtual face-to-face services where taxpayers interact with live assistant remotely via high-resolution video capabilities at partner locations. So far, this calendar year, nine Virtual Service Delivery (VSD) systems were installed at community partners, for a total of 39 locations around the country. These include two new VSD partner locations where face-to-face taxpayer services were not previously available in the community. The IRS has identified additional VSD locations and is planning and preparing for the installation.

Seniors and low to moderate-income taxpayers can get free help with return preparation through the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs during the filing season. At over 11,500 sites, taxpayers may obtain free face-to-face help preparing their tax returns. These programs provide services to primarily low to moderate income taxpayers, senior citizens, persons with disabilities, those with limited English proficiency, those located in rural locations, and Native Americans. TCE offers free tax preparation for all taxpayers, particularly those who are 60 years of age and older, specializing in questions about pensions and retirement-related issues unique to seniors.

IRS PRIVATE DEBT COLLECTORS

Question. Debt collectors were mostly targeting lower-income taxpayers, including some who are receiving Social Security Disability Insurance (SSDI)—these people are not supposed to be part of the program. The report also noted that of the 4,100 taxpayers who made payments after their debts were assigned to private collectors, 1,100, or 28 percent, had incomes below \$20,000.

What steps can the IRS take to ensure that taxpayers who also receive Social Security Disability Insurance (SSDI) are not targeted by private debt collection?

Answer. The Fixing America's Surface Transportation (FAST) Act, enacted in December 2015, requires the IRS to enter into qualified collection contracts for the collection of inactive tax receivables. The law is very specific about the types of cases that are excluded from the program. Accounts the IRS identifies as "currently not collectible" are not assigned to Private Collection Agencies (PCAs). Although the statute does not exclude from the program those taxpayers receiving Social Security Disability Income (SSDI) or Supplemental Security Income (SSI), the PCA will return any account to the IRS when, during discussion with taxpayers, they give any indication of receipt of SSDI or SSI, or when the taxpayer, for any reason, States they are unable to pay. As of January 25, 2018, the PCAs returned 2,109 accounts because the taxpayer self-reported receipt of SSDI or SSI.

The IRS provides oversight of the PCAs' taxpayer interactions, contractual compliance, and adherence to policies and procedures. Overall, the PCAs are performing at a 98.5 percent accuracy rate. The IRS will continue to provide this oversight and consider improvement opportunities to address any concerns if they arise.

CYBERSECURITY AND IDENTITY THEFT

Question. Can you describe the steps you are taking to prevent tax return fraud and assist the taxpayers who are tax identity theft victims while the customer service budget at the IRS is being cut?

Answer. Refund fraud caused by Identity Theft (IDT) is one of the biggest challenges facing the IRS today, and the harm it inflicts on innocent taxpayers is a problem the IRS takes very seriously. To resolve IDT cases faster, the IRS centralized its IDT victim assistance policy, oversight, and campus case work under the new Identity Theft Victim Assistance organization. Benefits to this centralized approach include managing work using a common inventory system, reducing hand-offs between functions, improved case processing through streamlined, consistent procedures, and improved communication.

In addition, the IRS resolves IDT cases faster using its toll-free hotline for IDT victims. All customer service representatives staffing this line, are trained IDT specialists who can review the taxpayer's case file and respond to the IDT victim's call anytime during business hours. For most cases, the average time to resolve a case is now less than 120 days. For more complex cases it can take up to 180 days. This

is substantially less than a few years ago, when cases could take more than 300 days to resolve.

To prevent taxpayers impacted by tax-related identity theft from becoming a repeat victim, we issue an Identity Protection Personal Identification Number (IP PIN). If an attempt is made to e-file a return without entering the IP PIN or if an incorrect IP PIN is entered, the return is rejected until the correct IP PIN is entered.

Question. What additional resources do you need to protect those systems and keep our taxpayer account information secure?

Answer. The 2019 President's budget included a program integrity cap adjustment proposal that includes funding for automating online fraud prevention capability to deliver actionable intelligence in near real time. The IRS also needs funding and flexibility to hire additional IT specialists skilled in data analytics/science and interrogating voluminous data, and additional cyber security specialists and the 2019 budget also included a request to extend the streamlined critical pay authority program.

Question. What is the IRS doing specifically to help small businesses to prevent them from falling victim and mitigating any impact if their business identity becomes compromised?

Answer. The IRS has increased business identity theft protections by expanding the upfront filtering and modeling to identify potential identity theft in business returns. In addition, the IRS continues to take a variety of steps to help make small businesses aware of the threat from identity theft. This has been a key component of the Security Summit external outreach and communications effort. The Security Summit is a partnership between the IRS, State tax administrators, and the private sector tax community and tax professionals, to battle tax-related identity theft. The IRS Security summit brings Federal, State, and tax preparation industry together to work together to eliminate tax refund fraud.

Here are some examples of our communications-related work touching on small businesses and identity theft:

Small Business Week 2018. During national Small Business Week in May, the IRS issued a series of news releases aimed at small businesses, including the following May 3rd news release: IRS urges small businesses: Protect IT systems from identity theft. The release links to a variety of resources, including: Has your business become the victim of a data security breach?

e-News for Small Business. e-News for Small Business is an IRS electronic newsletter distributed regularly to more than 300,000 subscribers. This year, the newsletter has included several security-related articles to help raise awareness among small businesses about identity theft and related issues.

Protect Your Clients, Protect Yourself. The ongoing Protect Your Clients, Protect Yourself campaign has helped educate the small business community about identity theft and what to do in the event a business identity or its information is compromised. An outgrowth of the Security Summit, the campaign launched in 2016 with a series of news releases and tax tips. The campaign initially focused on tax professionals, but has resources helpful to all small businesses.

Don't Take the Bait. As part of the Security Summit effort, the IRS, State tax agencies and the tax industry sponsored an educational series during summer 2017 called Don't Take the Bait. The series, part of the "Protect Your Clients, Protect Yourself" campaign, raised awareness of the critical need for tax professionals—as well as small business and taxpayers—to increase their computer security and be cautious when reviewing their inbox—specifically with regard to successful email scams, dubbed "spear phishing," that impersonate friends, customers, or companies.

At the beginning of the 2017 holiday shopping season, the IRS and its Security Summit partners conducted National Tax Security Awareness Week with a series of 10 news releases and tax tips to encourage both individual and business taxpayers to take steps to protect their tax data and identities in advance of the 2018 filing season. This work with State and private-sector partners, local consumer groups, law-enforcement agencies, and other government groups led to 32 different events across the country, more than 50 local television stories and coast-to-coast media attention. Twenty-four State revenue departments participated in the effort.

Question. Has there been an effort to bring small businesses into this, as they have a much harder time recovering if their identity is stolen or their credit is compromised?

Answer. Security Summit initiatives have focused on protecting all taxpayers, including small businesses, from identity theft. As stated above, outreach and educational efforts have focused on making all businesses, including small businesses aware of the potential threat of identity theft and steps businesses should take to protect themselves. The IRS, however, has conducted extensive outreach to make all businesses aware of the potential threat of identity theft. For example, the IRS issued a Newswire article on December 1, 2017 (Issue Number IR-2017-198), as part of the outreach communication efforts specifically focused on small businesses.

The IRS has also addressed protecting clients at the Nationwide Tax Forums.

Question. Have you brought business credit reporting agencies into the working groups to identify the right data points to help protect businesses in real or near real time?

Answer. Business credit reporting agencies are not currently participants in the Security Summit working groups. The IRS, however, worked with industry, States, and financial institutions to identify characteristics or elements of business returns that would be helpful in the identification of identity theft. In addition, the IRS established a payroll sub-working group to engage payroll companies in the fight against identity theft.

SOLAR INVESTMENT TAX CREDIT

Question. In December 2015, Congress passed The Protecting Americans from Tax Hikes (PATH) Act of 2015, which extended the tax credits for wind and solar production. The bill also made changes regarding the placed in service definitions so that investors can start earning the credit when construction begins. The IRS has provided guidance for wind energy facilities PTC in June 2016. The solar energy facilities ITC has not yet received any guidance from the IRS

The Protecting Americans from Tax Hikes (PATH) Act was enacted in 2015 and included a provision to extend and phase out the wind production tax credit (wind PTC) and the solar investment tax credit (solar ITC) and to change the qualification for the solar ITC to the start of construction.

The wind PTC received its guidance in 2016.

Businesses need certainty and clarity. Solar companies are bidding on projects now and need to know how the changes from the PATH Act would apply. Guidance is needed from the IRS to provide that certainty and clarity.

Given that it has been 2½ years since the provision for the solar ITC was enacted, will this guidance be issued shortly?

Answer. Guidance on the solar tax credit was issued in June 2018 ((Notice 2018-59).

QUESTIONS SUBMITTED BY HON. ROBERT P. CASEY, JR.

Question. Taxpayer Assistance Centers, which operate across Pennsylvania and across the country, are a critical service provided by the IRS. I note that TACs now operate by appointment. This is a recent change, and my staff has heard of individuals being turned away from TACs for lack of an appointment. In States like mine, taxpayers may drive quite a distance to go to a center to receive tax assistance.

What kind of procedures do you have in place for individuals who show up without an appointment?

Answer. Whenever possible, the IRS attempts to accommodate and serve all taxpayers that come into a TAC without an appointment, if there is capacity between scheduled appointments. The IRS also serves individuals by exception in cases of hardship, including senior citizens or those who have traveled long distances. For fiscal year 2018 through April 30th, TACs served more than 1.6 million customers, of which more than 6 percent were served without an appointment. Taxpayers do not need an appointment to make a payment by check or money order, drop off a current year tax return, and get forms.

Question. Do you have special procedures for seniors or other individuals who may have difficulty coming back to a TAC at a later date?

Answer. See previous question.

Question. In your testimony, you said the total number of taxpayers served at TACs this year through March 31st was 790,000, of which about 6 percent visited a TAC without an appointment. Please provide State-by-State data both for total taxpayers served by TACs and also those served by TACs without an appointment. Please also provide data on the number of taxpayers served prior to the requirement for an appointment, as well as data on how many taxpayers were turned away from a TAC this year because they lacked an appointment?

Answer. The chart below shows the total number of taxpayers served face-to-face at TACs by State, DC, and Puerto Rico for fiscal years 2015–2017.

State	FY 2015	FY 2016	FY 2017
Alaska	23,000	18,700	9,800
Alabama	114,700	86,500	58,700
Arkansas	40,200	38,000	23,900
Arizona	143,200	129,100	68,900
California	702,800	540,900	409,900
Colorado	62,000	53,500	40,500
Connecticut	69,900	55,700	44,100
District of Columbia	30,000	23,300	20,900
Delaware	23,700	20,900	11,400
Florida	387,100	313,300	277,000
GA	201,400	177,000	139,400
Hawaii	29,500	11,600	6,900
Iowa	35,700	24,900	16,500
Idaho	27,500	22,900	15,900
Illinois	170,900	139,800	108,600
Indiana	97,400	82,300	53,800
Kansas	30,900	24,100	19,200
Kentucky	51,500	37,000	29,300
Louisiana	124,800	93,900	66,300
Massachusetts	67,000	59,700	40,700
Maryland	119,100	87,500	60,700
Maine	38,000	32,500	18,000
Michigan	71,800	59,300	39,300
Minnesota	62,300	51,000	34,600
Missouri	135,900	108,000	54,700
Mississippi	60,700	49,800	32,100

State	FY 2015	FY 2016	FY 2017
Montana	31,700	24,400	11,100
North Carolina	121,700	96,400	95,000
North Dakota	29,900	27,500	18,400
Nebraska	37,500	35,200	21,800
New Hampshire	25,600	21,000	12,300
New Jersey	169,200	146,000	106,300
New Mexico	62,200	36,300	18,700
Nevada	78,000	53,100	31,200
New York	343,600	286,500	214,800
Ohio	105,900	106,400	76,300
Oklahoma	54,300	58,500	35,900
Oregon	74,100	63,300	59,200
Pennsylvania	149,900	123,100	93,700
Puerto Rico	62,700	63,900	52,900
Rhode Island	25,200	16,400	12,800
South Carolina	74,500	59,400	44,900
South Dakota	18,400	14,500	10,900
Tennessee	107,200	84,200	62,200
Texas	525,700	439,000	327,300
Utah	49,100	36,600	24,700
Virginia	114,200	86,100	52,600
Vermont	6,780	4,180	3,240
Washington	141,500	114,000	77,900
Wisconsin	50,300	41,900	33,100
West Virginia	34,300	28,900	16,700
Wyoming	19,900	19,000	11,000
Total	5,434,380	4,426,980	3,226,040

The chart below shows total number of taxpayers served face-to-face at TACs with and without an appointment and total number of taxpayers served face-to-face at TACs without an appointment by State, DC, and Puerto Rico for fiscal year 2018 from October 1, 2017 to April 30, 2018.

State	Taxpayers served face-to-face at TACs with and without an appointment	Taxpayers served face-to-face at TACs without an appointment
Alaska	5,780	1,380
Alabama	30,800	2,560
Arkansas	10,100	1,880
Arizona	40,900	4,140
California	230,500	15,100
Colorado	21,600	1,000
Connecticut	23,700	1,560
District of Columbia	12,100	270
Delaware	5,120	410
Florida	144,600	9,130
Georgia	72,900	6,070
Hawaii	4,220	100
Iowa	8,730	920
Idaho	7,640	750
Illinois	59,200	1,520
Indiana	24,100	3,400
Kansas	10,400	1,650
Kentucky	15,100	1,040
Louisiana	25,800	3,330
Massachusetts	19,000	1,860
Maryland	30,800	1,310
Maine	9,100	990
Michigan	19,800	1,310
Minnesota	17,200	1,650
Missouri	23,400	860
Mississippi	13,800	2,280
Montana	6,380	580
North Carolina	48,200	3,760
North Dakota	10,900	650
Nebraska	11,100	1,140
New Hampshire	6,750	1,390
New Jersey	52,200	2,520

State	Taxpayers served face-to-face at TACs with and without an appointment	Taxpayers served face-to-face at TACs without an appointment
New Mexico	9,700	110
Nevada	16,800	170
New York	96,700	5,030
Ohio	40,700	4,420
Oklahoma	17,800	2,820
Oregon	32,600	3,270
Pennsylvania	43,600	4,210
Puerto Rico	25,200	1,080
Rhode Island	6,350	300
South Carolina	27,100	2,580
South Dakota	5,870	540
Tennessee	32,800	1,650
Texas	172,100	10,180
Utah	12,700	550
Virginia	18,800	1,040
Vermont	2,180	180
Washington	43,000	1,820
Wisconsin	16,400	480
West Virginia	8,400	650
Wyoming	4,700	820
Total	1,655,420	118,410

Before requiring an appointment, in FY 2015 a total of 5.4 million taxpayers were served face-to-face at TACs. The IRS does not have data of how many taxpayers may have been unable to obtain service at a TAC because they lacked an appointment. This is difficult information to capture as some taxpayers choose not to wait; some find assistance through other channels such as *IRS.gov* or toll-free telephone lines; and some obtain their answer through information sources provided at the TAC.

Question. This committee has discussed cybersecurity and tax-related ID theft prevention quite a bit in the last few years. This threat is even more pronounced with the massive Equifax data breach last year.

Can you discuss investments you've made to better protect taxpayers' personal information?

Answer. The IRS has made significant investments in predictive analytics, forensics, and monitoring capabilities. The IRS has developed indicators/models to detect and/or prevent fraudulent activity in online applications. The IRS conducts in-depth analysis of anomalous behavior of online applications and coordinate our findings for appropriate and timely response. Going forward, the IRS will enhance these capabilities with investments in next generation advanced analytics, to generate actionable threat intelligence in near real-time.

SUBMITTED BY HON. JOHN THUNE

From *The Wall Street Journal*

THE WAGES OF TAX REFORM ARE GOING TO AMERICA'S WORKERS
 In a dynamic, competitive economy, what's good for companies is good for their employees.

By Kevin Hassett

April 18, 2018

In a dynamic, competitive economy, the relationship between companies and their employees is symbiotic, not antagonistic. Research by economists Alan Krueger and Lawrence Summers, both of whom served in the Obama administration, shows that more-profitable employers pay higher wages. Any company that attempts to pay a worker less than he is worth will quickly lose that worker to a competitor. Thus, firms that want to thrive must invest in their plants and workers.

When profits go up, capital investment goes up, and wages follow. That's the reason we estimated, based on what has happened around the world, that households will get an average \$4,000 wage increase from corporate tax reform, once its changes are fully implemented and swoosh through the nation's economic engine.

Naysayers have been invested in the law's failure from day one. But the data are already proving them wrong. An increase in the return to investment should drive investment and profits up, increase productivity and wages, and ultimately boost economic growth. Here's what we've seen so far this year:

- *More investment.* The President's promise to lower corporate taxes and reduce red tape has led to a surge in American business investment. Real private non-residential fixed investment increased 6.3 percent during the fourth quarter of 2017, according to data from the Bureau of Economic Analysis. Equipment investment rose 8.9 percent, thanks largely to the tax law's allowance for full expensing of equipment investment retroactively to September 2017. In March 2018, the Morgan Stanley Composite Capital Expenditure Plans Index reached its highest level since it began tracking in 2006.
- *Greater productivity.* Capital investment raises capital per worker and thus labor productivity. Here again, the early signs are positive. For perspective, real private nonresidential fixed investment was anemic at the end of the Obama administration: On a year-over-year basis, it fell 0.6 percent in 2016. As a result, during the post-recession expansion under President Obama (2010–16), the moving 4-year average contribution that capital made to labor productivity growth in the private sector turned negative for the first time in history. But boosted by a strong finish to the year, capital added 0.3 percentage point to productivity growth in 2017—and will add more in 2018 if the Morgan Stanley index is correct.
- *Pay raises.* The average increase in wages from the year-earlier period for January through March 2018 is the highest for any 3-month period since mid-2009. A flurry of corporate announcements provide further evidence of tax reform's positive impact on wages.

As of April 8th, nearly 500 American employers have announced bonuses or pay increases, affecting more than 5.5 million American workers, as a result of the TCJA. Walmart, the largest private employer in the country, has announced a \$2-an-hour increase in the starting wage of new workers and \$1-an-hour rise in its base wage for employees of more than 6 months. For someone working 40 hours a week, that is up to \$3,040 per year in additional pay.

Other employers have done the same, including BB&T Bank, where full-time workers earning the bank's minimum wage will see a \$6,000 increase in their annual income. Companies that have announced new bonus plans have lifted compensation by an average of \$1,150. Ten firms have also announced minimum-wage hikes that imply annual income gains of at least \$4,000 for full-time workers.

- *Faster growth.* Forecasters around the world are now predicting this growth can be sustained. The Organization for Economic Cooperation and Development has boosted its forecasts for real U.S. economic growth in 2018 and 2019 to nearly 3% to reflect the impact of the TCJA. The Congressional Budget Office also increased its growth projection for this year and next by an average of 1 percentage point relative to its last forecast before the tax bill was passed.

With the political battle over passage behind us, economists are again focusing on the data. All indications are that the tax bill delivered a much-needed boost to capital-starved American workers, and wages are doing what economics says they should when companies invest aggressively in more and better machines and share profits with workers. Perhaps it is a time to put aside the archaic notion that the conflict between capital and labor is the central story of our society. In a modern competitive economy, workers do well when their employers do.

Mr. Hassett is chairman of the White House Council of Economic Advisers.

PREPARED STATEMENT OF HON. RON WYDEN,
A U.S. SENATOR FROM OREGON

The annual hearing on tax filing season typically inspires the level of enthusiasm most people bring to a prolonged root canal procedure. But this year, there are big tax policy issues with serious consequences facing millions of Americans.

First, small businesses are increasingly stuck in a bureaucratic twilight zone. There is rampant confusion about how the new tax law works—untested policies, sloppy legislative drafting, and outright mistakes in the law. On top of that, a Trump Cabinet turf battle has been adding to the uncertainty and lengthening the time that small businesses are going to be in the dark about how the tax rules apply to them.

So here's the bottom line. Estimated tax payments are due, but millions of small businesses don't know how to estimate what they owe.

The owner of a restaurant known as a local landmark, the highly regarded mechanic whose expertise has built a loyal base of regular customers, the finish carpenter whose sought-after work is prized for its sturdiness and good looks—they've all been mired in this tax code mystery zone while Trump officials go 12 rounds over who's going to get final say on regulations. I understand there's been news on this issue this morning. But the fact is, deadlines for guidance from the administration are slipping. Tax experts are so unsure of the road ahead, they're advising small business clients to bump up their estimated payments from last year just to be safe.

Let's not forget that certainty was one of the key selling points of the tax bill—sure footing for businesses to focus on growing and hiring rather than deciphering a byzantine, outdated tax system. The magical growth effects were going to kick in right away, and workers were going to see big raises. The reality of the law looks awfully different.

All this confusion and delay create yet another golden opportunity for powerful lobbyists and special interests to creep in and twist the rules in their favor. They'll be after even more exclusive carve-outs and sweetheart deals—exactly the kind of favoritism that Americans want eliminated from our tax laws.

And the likelihood they'll be able to exploit these tax loopholes is even greater than in the past, because taxpayer audits have fallen to a 15-year low, with audits of high-income earners dropping the most.

I want to thank Acting Commissioner Kautter for joining the committee here today. As I said at the outset, I'd wager that most Americans would expect a hearing on tax filing season to be about as sleep-inducing as it gets on Capitol Hill. But I hope we're able to uncover some important information about what's ahead for taxpayers this year and going forward as the Trump tax law is implemented.

COMMUNICATIONS

CENTER FOR FISCAL EQUITY

14448 Parkvale Road
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Chairman Hatch and Ranking Member Wyden, thank you for the opportunity to comment on this year's tax filing season and future IRS challenges. This tax season will be much like last year's, as the new tax bill is not effective for that year's income. For most people, next year will be much the same as last year, although many will no longer itemize, but they will also lose exemptions. For those who use tax preparers or preparation software, there will be little difference.

Some enjoy their civic duty to file taxes, but those who use preparers probably do not, which is most people. The rich will likely use accountants who have other money management duties and who, like the IRS employees, must figure out the new tax rules on pass-through income. For some, these rules equalize the treatment of ownership income between corporate and non-corporate firms, to others this is just another give away to donors. For all businesses, the ending of corporate income taxation and its replacement with a value-added tax and/or a net business receipts/subtraction VAT would have been so much easier, save for the resistance of Chairman Hatch.

The reality is that an implicit hidden value-added tax is already in force. It is the tax withheld by employers for the income and payroll taxes of their labor force. A VAT simply makes these taxes visible while an NBRT makes them more manageable, allowing employers to adjust pay more easily for larger families, pay for health care or insurance and fund public and non-public schools for dependents and college or technical training for workers, as well as retirement plans that give employees a stake and a say in the firm and a more secure retirement.

As you see, we still firmly believe that it is the tax code more than the IRS that needs reform, and that what the IRS needs most is an adequate budget, although that budget will decline under our recommended reforms. By now, you are very familiar with our usual submission.

- A Value-Added Tax (VAT) to fund domestic military spending and domestic discretionary spending with a rate between 10% and 13%, which makes sure every American pays something.
- Personal income surtaxes on joint and widowed filers with net annual incomes of \$100,000 and single filers earning \$50,000 per year to fund net interest payments, debt retirement and overseas and strategic military spending and other international spending, with graduated rates between 5% and 25%.
- Employee contributions to Old-Age and Survivors Insurance (OASI) with a lower income cap, which allows for lower payment levels to wealthier retirees without making bend points more progressive.
- A VAT-like Net Business Receipts Tax (NBRT), which is essentially a subtraction VAT with additional tax expenditures for family support, health care and the private delivery of governmental services, to fund entitlement spending and replace income tax filing for most people (including people who file without paying), the corporate income tax, business tax filing through individual income taxes and the employer contribution to OASI, all payroll taxes for hospital insurance, disability insurance, unemployment insurance and survivors under age 60.

The collection of the employee contribution to Social Security will be exactly as it is now. Like proposals for a Fair Tax, the Value-Added Tax and NBRT/Subtrac-

tion VAT will be collected by the states. If the basic structure of reform is adopted in the states, the biggest change will be the need for a common base between federal and state consumption taxes.

Shifting from retail sales taxes and gross receipts taxes to value-added taxes and VAT-like net business receipts taxes will change the nature of most state taxation, while enabling ease of collection of taxes on online sales, since taxes would be levied at every stage of the production process. The IRS will assist states in this process, which will likely take the form of some federal-state compact commission to draft and approve the transitional rules.

If a common base agreement can be negotiated for these taxes, state treasurers can collect both their own taxes and the federal taxes, as well as analytical information on tax credit usage, which can then be shared with the U.S. Internal Revenue Service in order to track income accruing to payers of the federal high-income surtax, as well as to recipients of the federal child tax credit, which would be paid to employees with wages under the NERT and then verified by a mailing from both the employer and the Internal Revenue Service, with employees verifying that their employees paid every dollar to them reported as a credit.

There will likely be problems to resolve in our proposed system, where the states collect the Value-Added Tax and the Net Business Receipts Tax and forward the money and records to the Internal Revenue Service. This will not impact most taxpayers, since once they have bought a product, no further action is necessary.

The IRS will likely supplement state-based auditing with reviews of their own, but this is a small price to pay for a reform that will reduce the income tax payment and audit workload by at least 80%. Indeed, income tax simplification (through the elimination of all but a few deductions), will further eliminate the workload generated by remaining income tax payers. As you see, this is a much bigger change than reform around the edges.

Employees with children will need to annually verify the information provided by employers and, if they received less than was reported to the government, notify the IRS who will send a refund and collect the difference from the employer. This may trigger a dispute, but likely most employers will simply pay if there was an error. Fraud is another matter, which is criminal not a dispute to be settled. Other disputes may involve parents double-dipping on two jobs or two earners, but these will likely work out a payment plan or contact their divorce lawyers to negotiate who pays.

Whenever an employee or an heir is paid interest, a dividend, a capital gain or an heir sells an inherited asset, information will be transmitted to the IRS, as well as sales to a qualified Employee Stock Ownership Program (untaxed) and aggregated by Social Security Number. Verification will be accomplished to make sure that tax avoidance does not occur through use of multiple SSNs.

Individuals making over \$50,000 per year and joint filers making over \$100,000 will have their information stored to compare to tax filings, unless the Congress authorizes an automatic filing system where all income surtax payers will receive notification when all data should have arrived and what their refund or payment will be once they correct the information or certify it is correct already. Banking information should be on file, so authorization for payment, either at once or installments should be easy. Very little IRS administration will be required to do this. Indeed, data management and mailing could be contracted out. All IRS employees could fit in a bathtub with room for Grover Norquist.

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.

LETTER SUBMITTED BY ANAND DESAI

Members and staff of the Senate Committee on Finance:

Thank you for the April 12, 2018 hearing on “The 2018 Tax Filing Season and Future IRS Challenges” and the opportunity to contribute my opinions to the record. I share these opinions solely in my personal capacity, as a citizen.

Two recent Inspector General reports show a big gap between the law the IRS explains and the standards that the IRS ultimately enforces in large, complex cases. “Barriers Exist to Properly Evaluating Transfer Pricing Issues,” which the first highlights. (Transfer pricing is generally about economic allocations of a business’s

income between the United States and foreign countries, often tax havens.) In a year, \$10.5 billion in audit tax adjustments for cases involving this “most prevalent international tax issue representing the greatest tax compliance risk facing the [Large Business and International division]” entered IRS Appeals, its structured, detached settlement forum just short of court. Two billion dollars came through as “final” and \$321 million “posted to taxpayer accounts.” *Three cents on the dollar*. But why?

“Better Documentation is Required to Support Office of Appeals’ Decisions in International Cases,” the next puts mildly. In over two-thirds of the multi-million-dollar cases sampled, “Appeals did not weigh the relative strengths and weaknesses of both the taxpayers and the Government’s position as required by IRS guidance.” Appeals also accepted unsupported claims that taxpayers had failed to support during audits, and did not address IRS Counsel opinions that did support Exam’s positions.

The tax code and its interpretation and application could be part of the problem too, of course. But statutes, regulations, court decisions and even staff levels benefit from regular and robust debate and review. Meanwhile, broad nondisclosure of settlement practice, including “efforts to settle similar cases at similar rates,” risks the “development of a body of ‘secret law’ known only to a few members of the tax profession.” The Joint Committee explained that mandatory summary reporting of issues and methods—one alternative to releasing edited individual rulings—helps prevent businesses’ advance pricing agreements with the IRS. (See JCS–2–01.)

When a taxpayer calls the IRS for advice, it’s nice if they pick right up. But it’s vital that the IRS apply that advice—compromised only sparingly and accountably—across the board, so one can trust that following it really does mean paying one’s fair share toward funding effective, dependable government. *Recurring* and comprehensive independently led reporting on the IRS’s key enforcement challenges and efforts to fix them, like the Taxpayer Advocate’s work on particular taxpayers’ difficulties that the “Taxpayer First Act” reform bill embraces, would be a great step.

Sincerely,
Anand Desai

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April 12, 2018

Senator Orrin Hatch, Chairman
Senator Ron Wyden, Ranking Member
U.S. Senate
Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20515

RE: “The 2018 Tax Filing Season and Future IRS Challenges,” April 12, 2018

Dear Chairman Hatch and Ranking Member Wyden:

We write to you regarding the hearing on “The 2018 Tax Filing Season and Future IRS Challenges”¹ to bring your attention to *EPIC v. IRS*, a Freedom of Information Act case to obtain the tax records of President Trump.²

As you are aware, candidates for the Presidency have routinely released tax record information to the American public. Mr. Trump broke with that tradition even though he pledged to make this information publicly available. That fact combined with legitimate questions about the President’s financial relations with a for-

¹“The 2018 Tax Filing Season and Future IRS Challenges,” hearing before the Senate Committee on Finance, 115th Congress, <https://www.finance.senate.gov/hearings/the-2018-tax-filing-season-and-future-irs-challenges> (April 12, 2018).

²*EPIC v. IRS*, No. 17–5225 (D.C. Cir. appeal docketed October 4, 2017).

eign government that sought to influence the outcome of the 2016 Presidential election provided the basis for EPIC's FOIA case to the IRS.³

On April 15, 2017, EPIC filed a Freedom of Information Act lawsuit against the IRS to enable the public release of President Trump's tax records.⁴ As EPIC stated in the original FOIA request to the agency:

At no time in American history has a stronger claim been presented to the IRS for the public release of tax records to "correct misstatements of fact."⁵ If the Freedom of Information Act means anything, it means that the American public has the right to know whether records exist in a federal agency which reveal that the U.S. President has financial dealings with a foreign adversary.⁶

There is a key provision in the Internal Revenue Code that permits the release of tax records in certain circumstances to correct misstatements of fact. This provision, 26 U.S.C. § 6103(k)(3), was enacted to ensure the "integrity and fairness [of the IRS] in administering the tax laws" in the aftermath of the Watergate scandal and related misuses of tax information by the Nixon White House.⁷ It allows the IRS to release tax records "with respect to any specific taxpayer to the extent necessary for tax administration purposes to correct a misstatement of fact."⁸ Former IRS Commissioner Margaret Milner Richardson stated that § 6103(k)(3) "permits the IRS to disclose tax return information to correct misstatements of fact without a waiver from the taxpayer."⁹ In other words: the IRS does not need a waiver from President Trump to release his tax returns.

The IRS has used this disclosure power before. In 2000, the IRS used its § 6103(k)(3) authority to make ten separate disclosures of tax information.¹⁰ Indeed, as Senator Grassley has observed, § 6103(k)(3) dictates that certain "type[s] of factual misstatements should trigger disclosure of return information" depending on the "consequences of these misstatements" and "their degree of seriousness."¹¹

There has never been a more compelling request presented to the IRS than the request from EPIC to obtain the tax records of President Donald J. Trump. Many individuals, including the President, have published conflicting statements of fact about the contents of Donald J. Trump's tax returns and the extent of his business dealings with the Russian Government. Following the election, President Trump tweeted on January 11, 2017: "Russia has never tried to use leverage over me. I HAVE NOTHING TO DO WITH RUSSIA—NO DEALS, NO LOANS, NO NOTHING!"¹² However, family members, public figures, and news organizations have squarely disputed the President's denials of Russian financial ties, including Donald Trump, Jr., Eric Trump, Senator Chris Murphy, *The New York Times*, *The Washington Post*, and CBS News.

The IRS has the authority to release the President's tax returns with the approval of the Joint Committee on Taxation. We urge the Senate Finance Committee to support this release. The public has a right to review the tax returns of President Trump and to know about the extent of Russian interference with the 2016 Presidential election.

³The Electronic Privacy Information Center ("EPIC") is a nonpartisan research center established in 1994 to focus public attention on emerging privacy and civil liberties issues, <https://epic.org/epic/about.html>. EPIC is also a leading advocate for civil liberties and democratic values in the information age. In response to the finding of the intelligence community that the Russian Government interfered with the 2016 Presidential election, EPIC launched a new project on democracy and cybersecurity: EPIC, Democracy and Cybersecurity, <https://epic.org/democracy/>.

⁴Press release, EPIC, "EPIC v. IRS: A Freedom of Information Act Lawsuit to Obtain the Tax Returns of Donald J. Trump" (April 15, 2017), <https://epic.org/foia/irs/trump-taxes/EPIC-v-IRS-Press-Release-Apr-2017.pdf>; *EPIC v. IRS*, 261 F. Supp. 3d (D.D.C. 2017).

⁵26 U.S.C. § 6103(k)(3).

⁶FOIA request from EPIC to IRS (February 16, 2017), <https://epic.org/foia/irs/trump-taxes/EPIC-17-02-16-IRS-FOIA-20170216-Request.pdf>.

⁷"Confidentiality of Tax Return Information," hearing before the Committee on Ways and Means, 94th Congress, 22–23 (1976) (statement of Donald C. Alexander, Commissioner of Internal Revenue).

⁸26 U.S.C. § 6103(k)(3).

⁹Final remarks by Margaret Milner Richardson, Commissioner of Internal Revenue, Fed. B.A. Sec. Tax'n Rep., Spring 1997, at 6, 9.

¹⁰Internal Revenue Service, "Disclosure Report for Public Inspection Pursuant to Internal Revenue Code Section 6103(p)(3)(C) for Calendar Year 2000," at 3 (2001).

¹¹127 Cong. Rec. 22,510 (1981).

¹²*EPIC v. IRS*, 261 F. Supp. 3d 1, 4 (D.D.C. 2017).

We ask that this statement be entered in the hearing record. EPIC looks forward to working with the Committee on these issues of vital importance to the American public.

Sincerely,

Marc Rotenberg
EPIC President

John Davisson
EPIC Counsel

Caitriona Fitzgerald
EPIC Policy Director

Christine Bannan
EPIC Policy Fellow

LETTER SUBMITTED BY SUSAN GODING

April 20, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510-6200

RE: "The 2018 Tax Filing Season and Future IRS Challenges," April 12, 2018

Honorable Members of the Senate Committee on Finance:

In November 2016 my husband and I mailed to the IRS an amended 2015 return. In the return we had adjusted the depreciation of a new building on a farm we own. The following has been our experience with IRS since then.

We never received any acknowledgement from the IRS that the amendment had been received. Twice we contacted them and were told to check the IRS website. There was no answer there. Our CPA also checked on the status of our amended return and received no answer other than to check back. This was in late April 2017.

During the summer of 2017, I stopped at the IRS office in the Zorinsky Building in Omaha. The IRS customer service representative said the IRS mails a letter to acknowledge its receipt of an amendment, and follows up with a monthly letter providing its status. We never received anything of this nature from the IRS, nor had our CPA.

Finally, on September 14, 2017, our CPA was able to speak to an IRS person, Mr. Karmin (employee #100084316). Mr. Karmin said our amended return was "stuck and buried" someplace. Mr. Karmin did send an internal inquiry. He also said the IRS should have done this earlier when we or our CPA had made contact. This shows lack of proper training, follow-through, and organization methods of IRS staff.

On October 13, 2017, we received IRS Letter 2205 that said our 2015 return had been selected for an examination. The letter stated we had to call the IRS by October 23rd. After the IRS had 12 months it gave us 10 days. We perceived this to be retaliatory and aggravating.

On October 16, 2017, we receive a letter from Chris Wagner, an IRS representative/agent in Omaha, asking us to confirm an appointment to meet him on October 23rd, and for us to have additional items for the IRS review. On October 19, 2017, we received notice that Mr. Wagner had been out sick, but that he believed he had all the paperwork needed to finish our 2015 tax examination.

On October 23, 2017, I met Mr. Wagner at the IRS office in Omaha. We discussed our activities on the farm and the intent and purpose of the recently built farm shed on our property. Following our meeting, I emailed him additional information he'd requested. The next day additional emails were sent between us to clarify information and statements he'd questioned.

On November 13, 2017, our CPA received information from us to discuss with Mr. Wagner. Our CPA said he called Mr. Wagner three times and left messages before Mr. Wagner responded.

On November 14, 2017, our CPA received a call from Mr. Wagner to clarify things. Our CPA requested a few more items from us and commented that this examination did not appear to be handled in a very professional manner.

On November 27, 2017, we received an email from our CPA telling us Mr. Wagner had missed a 9 a.m. appointment to meet him that day. Mr. Wagner said he'd forgotten about it. The meeting had to be rescheduled for later that day at 2 p.m.

On November 29, 2017, we received IRS form 4564, requesting additional information and notice that on December 8th Mr. Wagner wanted an onsite inspection to see the farm shed and property.

On December 8, 2017, my husband and I each took annual leave from our jobs to meet Mr. Wagner at our farm. The inspection took about an hour. At that time Mr. Wagner said we had met the 500- and 100-hour tests for being actively engaged in our farm's day-to-day operations and management. Mr. Wagner also stated that his supervisor was Darcy Smith. We bring this up because several times in his discussions with us and our CPA, Mr. Wagner had said he could not make the decisions but would have to check with his supervisor. This was the first time he told us who that was. She had not been present at any meetings, nor had she corresponded with us. At this time, Mr. Wagner also said he would have the results of the 2015 examination sent to us in January 2018.

As of February 12, 2018, there still was no report from IRS. We did receive IRS letter 2205a from Mr. Wagner with notification that our 2016 return was selected to be examined and included another list of what we needed to provide.

On February 14, 2018, our CPA contacted Mr. Wagner. Mr. Wagner told him that a report from IRS should be in the mail tomorrow (February 15th) that would address the 2015 tax filing examination.

On February 17, 2018, no letter from IRS had been received regarding the 2015 examination. Our CPA coordinated with Mr. Wagner date of delivery information that had been requested of us for the 2016 examination. My husband was out of town on business.

On February 27, 2018, our CPA confirmed with Mr. Wagner the delayed delivery of our information. Mr. Wagner also said he had "misspoken" about when the IRS letter regarding 2015 examination would be sent to us. But Mr. Wagner then stated that a letter would be forthcoming.

As of April 18, 2018, almost 2 months later, there is no letter from IRS regarding either 2015 or 2016 examinations. There are no conclusions. There is no communication from IRS as to when we might expect the matter to be closed. Does Mr. Wagner still work there?

The IRS has had our 2015 amended return for 18 months and has repeatedly given us time frames they have failed to meet, and there has been no explanation. This should have been a simple audit. Shouldn't there be a trained and competent IRS agent who is familiar with farms and farming on staff in Nebraska? It has been a very unprofessional and disrespectful manner in which the IRS has operated. There was no response for 12 months after the IRS had received the amendment. There were constant and unaddressed IRS delays. What is the status of our 2015 amendment and the additional 2016 return examinations? When will we know? Who at the IRS is responsible or accountable for how these examinations have been handled? Is there anyone in charge? Is there an organized system?

Repeatedly hearing Mr. Wagner say, "Let me check with my supervisor" makes us wonder why Mr. Wagner is there and why the supervisor isn't present or available in this process? Doesn't Mr. Wagner have the knowledge or tools to do these examinations? Mr. Wagner said he'd been with the IRS for 5 years. It has been our experience with the IRS that it is understaffed and lacks necessary training. Hiring practices are weak.

The IRS needs more funding and better leadership to do its job. The lack of professional and efficient management and poor hiring practices and training make it a costly organization.

Sincerely yours,

Susan Goding

cc: U.S. Senator Deb Fisher (Nebraska)
U.S. Senator Ben Sasse (Nebraska)
Mr. Dan Dudley, CPA (O'Donnell, Ficenec, Wills, and Ferdig, LLP, Omaha, NE)