



October 11, 2023

The Honorable Daniel I. Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Re: Pandemic-Related Compliance Suspension

Dear Commissioner Werfel:

On behalf of the National Association of Enrolled Agents and the more than 65,000 enrolled agents (EAs) it represents, I write to share the EA perspective on the IRS' significant cutback to its compliance initiatives and to request IRS start sending reminder notices immediately to non-filers and those with balances due in excess of \$10,000 and provide practitioners with continuous, authorized, firm-level access to client account information to resolve tax issues.

Background

In a March 2020 response to COVID-19, IRS unveiled its People First Initiative, temporarily suspending both liens and levies initiated by field Revenue Officers (ROs) as well as automatic, systemic liens and levies. Nearly a year later, IRS responded to a backlog of original/amended tax returns and other correspondence with a second retrenchment, suspending a dozen additional letters, including non-filer notices and Automated Collection System (ACS)-generated notices issued when a taxpayer owes additional tax.

EAs understood that extraordinary times called for extraordinary measures. Yet those times are past. IRS returned its bargaining unit employees to their offices in May 2022 and declared it expected paper return and correspondence inventories would return to normal by the close of 2022.

While field collection appears to have ramped up from pandemic lows, the lion's share of collection volume is generated from ACS, which has essentially stopped issuing collection reminder notices. Further, IRS non-filer communication has dropped precipitously. The IRS in FY22 issued well under 200,000 non-filer inquiries even as the number of known non-filers spiked to 11.3+ million (up from 7.9 million in FY21).

Compliance Suspension Leads to Uneven Enforcement

The significant reduction in IRS compliance activity erodes trust in the system and leads to uneven enforcement.

IRS leadership informed stakeholders the agency would begin to return ACS and non-filer activity to normal several times in 2023. However, the pause on basic compliance activity continued to be extended with no specific restart date or reasonable justification for the delay. Most recently, the IRS leadership has indicated it will likely not restart suspended notices until sometime after the new year.

Our members communicate with millions of taxpayers annually and they have seen the negative impacts of the suspended notices. When taxpayers do not hear from the IRS, and are not subject to automatic enforcement actions, compliance inevitably goes down. EAs have seen this pattern in recent years:

- *It used to be that people could delay but eventually IRS would catch up. Some clients haven't been assigned to the field or ACS and are just waiting out the statute.*
- *A mortgage broker (Form W-2 employee) hasn't filed since 2013 and was intentionally waiting to file those returns because she had several large retirement distributions and real estate transactions in 2014-15. Her non-filing logic: "the longer I go without filing, the less likely I'll have to pay taxes on the 2014-15 balances."*
- *The state garnished the wages of a medical doctor who hasn't filed since 2019. He owes \$700K for 2014 (IRS filed an SFR) and 2017-18 (non-filer in 2015-16). He filed 2017-18 during the pandemic, only because he wanted to add to his 15-rental property portfolio. He has another \$200K in unassessed income taxes. He will owe \$1M after all his returns are filed. He hasn't made a federal tax payment since 2014. IRS categorizes his account as Currently Considered Collectible, but he never received a collection notice, so no federal tax liens filed.*
- *Most farmers are enrolled in USDA programs, which require AGI verification for Agriculture farm program benefits. In recent years, it hasn't been uncommon for some to go 3-4 years without filing until they get caught up to receive program benefits. IRS isn't driving actions (even though it has W-2 and 1099 information).*
- *Other non-filers would have received refunds if they hadn't waited so long to file. Ten years ago, IRS would have sent a CP2000 notice listing sources of income and asked the taxpayer to respond; if no response, IRS created a Substitute for Return and asked the taxpayer to agree or disagree.*

Stakeholder Concerns Over Delay in Notices

The National Taxpayer Advocate, Erin Collins, who fully supported the initial pandemic ACS notice suspension, has since pivoted. In a September 7th blog, she wrote, "My concern is the longer the notices are delayed, the more that taxpayers may have a false sense that the IRS may have forgotten about their tax balance—or maybe taxpayers fail to understand penalties and interest continue to accrue until final payment." More recently, Ms. Collins wrote, "**It is time for the IRS to reinstate issuing notices and provide taxpayers with information on their outstanding balances and provide collection alternatives.**"

Senate Finance Committee Chairman Ron Wyden also wrote you two weeks ago on a related if more specific issue, high-income non-filers: "**I...urge...IRS to significantly increase enforcement action against wealthy cheats who refuse to file tax returns. New data...has identified staggering levels of noncompliance...by high-income non-filers.**"

Further, the Treasury Inspector General for Tax Administration (TIGTA) published its annual audit of IRS tax lien filing activity and noted IRS procedures (IRM 5.12.2.6) "generally require a NFTL [notice of federal tax lien] filing determination be made when a taxpayer has balance of \$10,000 or more." Yet **IRS did not file NFTLs for more than 1.5 million individual and business taxpayers (see Figure 1) even though a quarter million of these taxpayers received Forms 1098 showing mortgage interest.**

**Figure 1: Number of Taxpayers with Balance Due
Amounts above \$10,000 from July 1, 2021 to June 30, 2022**

Balance Due Amount	Business Taxpayers	Individual Taxpayers	TOTAL
\$10,001 - \$50,000	220,163	1,018,859	1,239,022
\$50,001 - \$100,000	27,197	124,771	151,968
\$100,001 - \$500,000	24,154	83,100	107,254
\$500,001 - \$1,000,000	3,097	7,903	11,000
\$1,000,001 - \$10,000,000	2,097	1,689	3,786
Above \$10,000,000	226	54	280
Total	276,934	1,236,376	1,513,310

Source: TIGTA analysis of IRS Master File and Collection data.

And IRS itself is well aware of the fundamental rule of collection: yield is directly correlated with speed of action. IRS researcher Tom Beers and others concluded a 2015 paper entitled *IRS Collectability Curve*:

Dollars collected in aggregate and as a percentage of the balance due decrease significantly during the first 3 years after the IRS assigns a liability to TDA status. The decline in the module balance also slows significantly during these first 3 years.

Sharp Decline in Compliance

According to the IRS Data Book, in FY10, IRS opened nearly 2.3 million TDIs (non-filer investigations). In FY22, IRS opened 469,000 TDIs. In FY 2010, IRS filed 1.1 million liens and 3.6 million levies; in FY19, IRS filed 544,000 liens and 783,000 levies; and in FY22, IRS filed 157,000 liens and 273,000 levies. Liens and levies were in significant decline pre-pandemic and then dropped even further.

In a recent *Accounting Today* article, the author suggested—and our experience does not counter this—what few liens were issued were likely a result of taxpayers entering into payment agreements requiring an IRS lien or from IRS field collection enforcement. He also suggested automated state income tax refund and Social Security levies plus field collection enforcement accounted for limited pandemic-era levies.

Prompt IRS Action Required

NAEA believes that the IRS must immediately begin to take action to restart collection activity. It can begin this process by starting to send reminder notices immediately to non-filers and those with balances in excess of \$10,000 (including Letter CP59 and Letters 501 and 503).

Taxpayers with substantial taxes owed have not heard from the IRS and the process of restarting notices must begin as soon as possible. We understand that adjustments are being made to some notices, but these pending changes must not cause any further delay.

In addition, the IRS must help ensure a better customer experience for the taxpayer and meet taxpayers where they are by providing practitioners with continuous, authorized, firm-level access to client account information to resolve tax issues. Client account information is the baseline for preparing any new client (including non-filers) tax return and responding to an IRS notice. Firm-level access would allow a firm to access client account information through e-Services Transcript Delivery Service (TDS)

without calling the IRS (and without pushing reluctant clients through opening their own accounts) and will allow the IRS to leverage tax pro expertise in their efforts to improve taxpayer compliance.

Conclusion

If every adult in Maine, New Hampshire, Vermont, Connecticut, Rhode Island, Delaware, and Maryland stopped filing, what would that mean for tax administration? We ask this rhetorical question because some 11.2 million adults live in those seven states—a number nearly equal to the number of known non-filers referenced earlier.

EAs are on the front line of compliance, fear a public perception that there are no consequences to failing to file or pay taxes, and are concerned that this system of voluntary compliance is being eroded.

As always, enrolled agents are committed to helping taxpayers comply with their filing, reporting, and payment obligations as well as assisting taxpayers in exercising their rights. NAEA would be pleased to partner as the Service moves forward with these necessary steps.

Sincerely,

A handwritten signature in black ink, appearing to read "Cynthia Leachmoore". The signature is written in a cursive, flowing style.

Cynthia Leachmoore, EA
President

Cc: Ms. Erin Collins, National Taxpayer Advocate, Internal Revenue Service