

National Taxpayer Advocate Erin Collins delivers her first report to Congress; Identifies COVID-19 challenges, CARES Act, and Taxpayer First Act implementation as priority issues for taxpayers

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WASHINGTON — National Taxpayer Advocate Erin M. Collins today released her first [report to Congress](#), identifying taxpayer challenges arising from the COVID-19 pandemic, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and the IRS's implementation of the Taxpayer First Act as priority issues the Taxpayer Advocate Service (TAS) plans to focus on in the coming year. The report also assesses the 2020 filing season, identifies other TAS areas of focus, and includes the IRS's responses to administrative recommendations proposed in the National Taxpayer Advocate's 2019 annual report.

"On March 30, 2020, I had the honor and privilege of being sworn in as the third National Taxpayer Advocate," Collins wrote. "Starting in the midst of a pandemic and witnessing IRS offices closing one by one was not the way I envisioned my role when I accepted the position, . . . but there also has been a silver lining in this experience: As I have participated in conference calls with members of my leadership team, TAS employees, and the IRS's COVID-19 response team, I have been extraordinarily impressed by their commitment and focus on the health and safety of all employees during this pandemic, while still doing as much as possible to assist taxpayers."

In her preface to the report, Collins expressed appreciation to Nina Olson, who served as the National Taxpayer Advocate from 2001-2019, and Val Oveson, who served as the first National Taxpayer Advocate from 1998-2000. "Over the past 20 years, TAS has successfully assisted more than 4.5 million taxpayers by helping them resolve their tax problems and protecting their rights, and it has made hundreds of administrative recommendations adopted by the IRS and some 45 legislative recommendations enacted by Congress," Collins wrote.

Taxpayer Challenges Arising from COVID-19 Pandemic

The report praises the IRS for acting quickly to postpone over 300 filing, payment, and other time-sensitive deadlines, provide broad relief from compliance actions under its "People First Initiative," and disburse some 160 million Economic Impact Payments (EIPs) authorized by the CARES Act, enacted on March 27, 2020.

However, the report says that despite the IRS's best efforts, there have been notable adverse taxpayer impacts, including:

- Taxpayers who filed a 2019 paper return and are entitled to refunds may be in for a long wait. The IRS had to suspend the processing of paper tax returns, and as of May 16, it estimated it had a backlog of 4.7 million paper returns. Although the IRS is reopening some of its core operations, it is not clear when it can open and process all the returns sitting in mail facilities.



- Some taxpayers whose returns were mistakenly flagged by IRS processing filters are experiencing lengthy delays in receiving their refunds. All tax returns claiming refunds are passed through filters designed to detect identity theft and other types of refund fraud. As TAS has documented, some of these filters produce “false positive rates” of more than 50 percent (meaning that more than half the taxpayers whose returns are stopped by certain filters are entitled to the refunds they claimed). Affected taxpayers are often asked to mail in documentation to substantiate their claims, but the IRS has not opened or processed many of their responses, delaying their refunds. Refund delays can have a significant financial impact on low-income taxpayers, as refunds often constitute a significant percentage of their annual household incomes. Notably, some of the refund delays have been generated by claims for the earned income tax credit or additional child tax credit.
- Taxpayers who have needed help from the IRS have had difficulty obtaining it. The IRS shut down its Accounts Management telephone lines, so taxpayers could not reach a live assistor by telephone. The IRS shut down its Taxpayer Assistance Centers, making it impossible for taxpayers to obtain in-person assistance. The IRS also shut down its mail facilities, so it was unable to log or process taxpayer responses to compliance notices. The only resources readily available were IRS.gov and automated telephone lines. The IRS has begun reopening its operations, but it will take some time before they are restored to full capacity.
- IRS systems prepared over 20 million notices during the pandemic that could not be mailed due to closure of notice production centers between April 8 and May 31. The IRS is mailing these notices now. However, some collection notices bear old dates and include response deadlines that often have passed. The IRS plans to include “inserts” with these notices explaining that response deadlines have been postponed, but the report expresses concern that receiving compliance notices with response deadlines that have passed will be confusing and concerning to many taxpayers who may not read the inserts.

Taxpayer Challenges Relating to the CARES Act

The report says the IRS generally did a commendable job implementing the CARES Act, but taxpayer challenges remain, including:

- Individuals who did not receive some or all of their EIPs may have to wait until next year to receive them. To date, the IRS has taken the position that most taxpayers who did not receive their full payments must wait until they file their 2020 income tax returns to claim the amounts as credits against their 2020 tax liabilities, even though there is no legal constraint on the IRS’s ability to issue additional EIP amounts as advance refunds during 2020. Congress enacted the CARES Act both to provide emergency financial relief to taxpayers on an individual level and to boost spending on the national level. TAS will continue to urge the IRS to provide full EIPs to eligible taxpayers throughout 2020 as rapidly as possible. The report says that making taxpayers wait until next year to receive their EIPs harms the affected taxpayers and is inconsistent with congressional intent.
- Employers are struggling to determine whether they qualify for the Employee Retention Credit (ERC) and in what amounts. The ERC is a complex, refundable tax credit that



requires employers to determine when a trade or business was fully or partially suspended by government order; the employer's number of full-time employees; what constitutes qualified wages; whether a business's operations post-COVID-19 are comparable to its pre-COVID-19 operations; and the application of aggregation rules. To address these complexities, the IRS has provided considerable guidance regarding when and how to claim the ERC. However, several areas require further clarification. If clarity is not provided, taxpayers will be more likely to make unintentional errors, increasing the risk of an audit. Having to untangle these issues in an audit environment would drain the limited resources of both the IRS and the businesses affected by the COVID-19 pandemic. TAS will continue to advocate that the IRS further clarify the rules governing when and how employers should claim this credit.

- Businesses are facing challenges when seeking to utilize the CARES Act provision that authorizes the use of net operating losses to offset taxable income in prior years (and in some cases to receive refunds). For businesses to determine the optimal application of the CARES Act provisions so they can exercise their *right to pay no more than the correct amount of tax*, they may need to create and run complex financial models involving multiple tax years. The report says the IRS has provided timely guidance in the form of frequently asked questions (FAQs), but it expresses concern that FAQs are not authoritative or binding on the IRS.

Implementation of Taxpayer First Act

The Taxpayer First Act (TFA), enacted one year ago, constitutes the most far-reaching revisions to tax administration since the IRS Restructuring and Reform Act of 1998. The TFA included some 23 provisions recommended by the National Taxpayer Advocate. A centerpiece of the TFA is a requirement that the IRS develop four strategic plans: (i) a comprehensive taxpayer service strategy; (ii) a plan to redesign the IRS's organizational structure; (iii) a comprehensive employee training strategy that includes training on taxpayer rights and the role of TAS; and (iv) a multi-year plan to meet IRS information technology needs. The TFA required the IRS to submit its comprehensive taxpayer service strategy to Congress by July 1, 2020. Because of disruptions caused by COVID-19, the IRS has been delayed in developing these plans, but it expects to deliver its taxpayer service strategy to Congress by the end of the year.

The report details some steps the IRS has taken to receive input from taxpayers, practitioners, and TAS, and identifies over two dozen TFA provisions that the IRS has implemented. It expresses concern that the IRS has not properly implemented a provision directing it to establish a single point of contact for identity theft victims and that it may not properly implement a provision directing it to exclude taxpayers with adjusted gross incomes at or below 200 percent of the Federal Poverty Level from assignment to private debt collection agencies by December 31, 2020.

Collins said, "I have been impressed by many ideas the IRS is considering, and I look forward to working with the leadership as it refines its taxpayer service strategy in the coming months."

2020 Filing Season Review

The National Taxpayer Advocate's mid-year report typically includes an assessment of the filing



season that measures performance against the results of prior filing seasons. Because the IRS closed most of its operations in March and postponed many filing and payment deadlines from April 15 to July 15, this filing season cannot fairly be compared with prior years. The disruption caused by COVID-19 and the postponed due date has had – and continues to have – an enormous impact on the 2020 filing season, reflected in the number of returns received, the volume of correspondence received from taxpayers, and the reduction in toll-free telephone service. Among the impacts were:

- Due to campus and office closures, the IRS could not staff phone lines to assist callers beginning the week of March 21, 2020.
- After March 20, 2020, taxpayers no longer had access to face-to-face customer service.
- There is a large backlog of incoming mail (about ten million pieces of mailed tax returns or correspondence sitting in trailers at IRS campuses). The IRS could not process paper returns and process or respond to other written correspondence from taxpayers.
- The IRS has sent only a very limited volume of outgoing taxpayer correspondence.
- There was a substantial reduction in Volunteer Income Tax Assistance, Tax Counseling for Elderly, and Low Income Taxpayer Clinic services.
- The National Distribution Center was shut down, depriving taxpayers of a means to acquire pre-printed forms.

Because of the IRS's limitations and the postponed filing deadline, an assessment of the filing season is necessarily incomplete. The report says TAS may provide a more thorough analysis later.

Other TAS Areas of Focus for Fiscal Year 2021

Beyond COVID-19, the CARES Act, and TFA implementation, TAS continues to advocate on a broad range of issues. The report describes ten issues TAS plans to focus on during the upcoming fiscal year. These include working with the IRS to provide taxpayers with limited English proficiency meaningful access to tax products and services; improving the clarity and content of IRS notices and correspondence; improving service to and communication with taxpayers in rural and other communities that lack high-speed internet access; and working with the IRS to refine its screening filters so fewer legitimate returns are flagged as potentially fraudulent and cause refund delays for affected taxpayers.

IRS Responses to National Taxpayer Advocate Administrative Recommendations

The National Taxpayer Advocate is required by statute to submit a year-end report to Congress that makes administrative recommendations to resolve taxpayer problems. Section 7803(c)(3) of the Internal Revenue Code authorizes the National Taxpayer Advocate to submit administrative recommendations to the Commissioner and requires the IRS to respond within three months. Under this authority, the National Taxpayer Advocate annually transmits to the Commissioner all administrative recommendations proposed in her year-end report for



response.

The Acting National Taxpayer Advocate made 78 administrative recommendations in the 2019 year-end report and then submitted them to the Commissioner for response. Of those, 59 were made in the “Most Serious Problems” section of the report. The IRS has implemented or agreed to implement 41 (or 69 percent).

The report made 19 administrative recommendations in other sections of the report. The IRS has taken the position that it is not required to respond directly to them and has provided only general narrative responses. The National Taxpayer Advocate believes the IRS is required to provide direct responses. “The intent of the statute is clear,” the report says. “If the National Taxpayer Advocate makes an administrative recommendation to mitigate a taxpayer problem – regardless of whether or where it has appeared in a report – the IRS should evaluate it and respond in writing so that TAS, Congress, and the taxpaying public know whether the IRS plans to implement the recommendation and, if not, why not. General narrative discussions that do not address recommendations directly fail to satisfy this objective.”

The IRS responses are published in full in an appendix to the report.

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The National Taxpayer Advocate is required by statute to submit two annual reports to the House Committee on Ways and Means and the Senate Committee on Finance. The statute requires these reports to be submitted directly to the Committees without any prior review or comment from the Commissioner of Internal Revenue, the Secretary of the Treasury, the IRS Oversight Board, any other officer or employee of the Department of the Treasury or the Office of Management and Budget. The first report must identify the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in that calendar year. The second report must discuss the ten most serious problems encountered by taxpayers, identify the ten tax issues most frequently litigated in the courts, and make administrative and legislative recommendations to resolve taxpayer problems.

The National Taxpayer Advocate blogs about key issues in tax administration. Click [here](#) to subscribe. Past blogs from the National Taxpayer Advocate can be found [here](#).

About the Taxpayer Advocate Service

The Taxpayer Advocate Service (TAS) is an *independent* organization within the IRS that helps taxpayers and protects taxpayer rights. Your local advocate’s number is in your local directory and at <https://taxpayeradvocate.irs.gov/contact-us>. You can also call TAS toll-free at 877-777-4778. TAS can help if you need assistance in resolving an IRS problem, if your problem is causing financial difficulty, or if you believe an IRS system or procedure isn’t working as it should. Our service is free. For more information about TAS and your rights under the Taxpayer Bill of Rights, go to <https://taxpayeradvocate.irs.gov>. You can get updates on tax topics at facebook.com/YourVoiceAtIRS, [Twitter.com/YourVoiceatIRS](https://twitter.com/YourVoiceatIRS), and YouTube.com/TASNTA.