

TAXPAYER

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In this Issue

1 IRS Challenges

National Taxpayer Advocate's first report to Congress identifies many current IRS issues.

1 IRS Notices Delayed

IRS notices have been delayed due to COVID-19. Here's what's happening.

2 Tax Tidbits

Bits of information you may find interesting.

IRS Challenges

National Taxpayer Advocate Erin Collins was sworn in on March 30, 2020. In her first report to Congress, she identified a myriad of issues that taxpayers and the IRS are facing due to the COVID-19 pandemic.

Ms. Collins praised IRS for taking swift action to postpone over 200 filing, payment, and other time-sensitive deadlines, to provide broad relief from compliance actions under the "People First Initiative" and disburse about 160 million Economic Impact Payments.

She also noted some adverse taxpayer impacts. Taxpayers faced some unusual issues due to the pandemic and the CARES Act.

Challenges Due to the Pandemic

Taxpayers who filed their 2019 tax returns on paper and are entitled to

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refunds may have a long wait. The IRS had to suspend processing of paper tax returns due to the pandemic.

As of May 16, IRS estimated it had a backlog of 4.7 million paper returns to be processed. Although IRS is re-opening some of its core operations, it isn't clear when it can open and process all the correspondence and returns sitting in the mail facilities. The backlog is estimated at a total of 10 million pieces of mail.

Some taxpayers who filed tax returns electronically are still waiting for their refunds. All tax returns claiming refunds are passed through filters designed to detect identity theft and other types of tax return fraud.

The Taxpayer Advocate Service (TAS) has previously documented that some of these filters produce "false positive rates" of more than 50%. This means that more than half of 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 refunds claims. However, the IRS has not opened or processed many of their responses, so refunds are delayed.

Taxpayers (and tax return preparers) who need to contact IRS have had a difficult time. The IRS shut down its Accounts Management telephone lines, as well as its Taxpayer Assistance Centers. This made it impossible for taxpayers to either call IRS or obtain in-person help. They also shut down their mail facilities, so any mail received could not be logged or processed.

IRS has begun the process of re-opening its facilities, but it will take some time before they are operating at full capacity.

Challenges for Taxpayers Related to the CARES Act

Not all individuals have received their Economic Injury Payments (EIP) yet. 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. Taxpayers who did not receive their payments, or only received partial payments, can claim the amounts as credits against their 2020 tax liabilities.

However, there are no constraints on the IRS's ability to continue to issue EIP payments. These payments are intended to provide emergency financial relief to taxpayers. Making people wait for these funds goes against the intent of the CARES Act.

The Taxpayer Advocate's Office is urging IRS to provide full EIPs to eligible taxpayers through this year, and to do so as soon as possible.

Employers are trying to determine whether they qualify for the Employee Retention Credit (ERC) and in what amounts. This is a complicated, refundable tax credit that requires employers to:

- Determine when a business was either fully or partially suspended from operating due to a government order.
- The business's number of full-time employees.
- What constitutes qualified wages.
- Whether operations post-COVID-19 are comparable to operations pre-COVID-19; and
- Whether they are subject to aggregation rules.

IRS has provided a significant amount of guidance on this credit, but several areas need further clarification.

Businesses are also facing challenges on how to utilize CARES Act provisions that allow them to carry back net operating losses to prior years. To determine the optimal application of these CARES Act provision requires complex financial models involving multiple tax years.

IRS has provided guidance, in the form of frequently asked questions (FAQs), on its website. However, the Taxpayer Advocate notes that these FAQs are not authoritative or binding on the IRS.

In a recent blog post, the Taxpayer Advocate's office published a detailed description of the issues surrounding taxpayer reliance on FAQs published by IRS.

TAS explains that IRS uses FAQs to strike a balance between precision and timeliness. The process to publish guidance is thorough and time-consuming, so information cannot be provided quickly. FAQs are provided quickly, but are not required to undergo the intensive review of published guidance. As a result, the FAQs are often changed after they are published on the IRS website.



Taxpayers who followed information provided in FAQs that are later changed may find themselves subject to penalty for the positions taken on their tax returns. TAS recommends that IRS should consider this when determining whether to assess penalties on affected tax returns.

IRS Notices Delayed

IRS computer systems prepared over 20 million notices during the pandemic that could not be mailed due to the closure of facilities. These notices are now being mailed, but many of them have passed their stated "response deadlines" already. IRS is allowing additional time for taxpayers to respond to these notices.

IRS says they will include an insert with these notices explaining that response deadlines stated on the notices have been postponed due to

the pandemic. However, they expect this situation will be confusing for taxpayers.

If you receive a notice from IRS, be sure to read through all the pages of the notice, as well as any inserts that are included in the envelope. If your response deadline has passed, there should be an insert with information about your revised due date.

Tax Tidbits

Through July 12, 2020 the total number of tax return that had been received at IRS was up 1% compared to July 10, 2019. However, the total number of returns processed was down by 7% year over year.

As of that date, IRS had received 147,142,000 tax returns, but processed only 134,603,000 returns. The obvious reason – the coronavirus pandemic forced shutdowns at IRS facilities.

For the same period, e-filed tax returns increased by 1.9%. The total number of refunds year-over-year decreased by 8.4%, but the average refund increased by 0.8% from \$2,739 in tax year 2019 to \$2,762 in tax year 2020.

Direct deposit refunds were down by 10%. The average direct deposit refund amount increased by 0.5% from \$2,885 in 2019 to \$2,899 in 2020.

Visits to IRS.gov increased by a whopping 162.2%. IRS reports that their site was visited 1,353,646,000 times through July 10, 2020.

For More Info

The articles in this newsletter are intended to present general tax information. Accounting rules and tax laws are complex. Not all ideas presented may be appropriate for your specific circumstances.

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