

Brownstein

DATE: May 19, 2022

TO: Interested Parties

FROM: Brownstein Hyatt Farber Schreck

RE: House Ways and Means Subcommittee on Oversight: “Taxpayer Fairness Across the IRS”

On Tuesday, May 18, the House Ways and Means Subcommittee on Oversight held a hearing on taxpayer fairness at the Internal Revenue Service (IRS). Testifying before the committee were Commissioner for Wage and Investment and Chief Taxpayer Experience Officer for the IRS Ken Corbin; and Director, Government Accountability Office (GAO) Strategic Issues Team James R. McTigue, Jr.. The discussion centered on the audit rates of different taxpayers, backlog of tax returns and the taxpayer experience at the IRS.

Member Opening Statements

Chair Bill Pascrell (D-NY), after noting that the IRS should treat all taxpayers fairly regardless of income, said that taxpayers with incomes below \$25,000 are two-times as likely to be audited than taxpayers making \$200,000 to \$500,000. He also emphasized higher audit rates among taxpayers who claim the Earned Income Tax Credit (EITC) and expressed frustration with the customer service, tax return processing and taxpayer correspondence at the IRS. Ranking Member Tom Rice (R-SC) expressed discontent that the committee was focused on audit rates instead of other issues. Nevertheless, he expressed frustration with the unsatisfactory customer service and tax return processing backlog at the IRS. Like Pascrell, Rice stated that the EITC has a 25% improper payment rate and said Congress should uncover the root cause of this disparity.

Key Themes

- **Audits:** Pascrell asked which groups benefit the most from higher audit rates. McTigue said all parties lose as audit rates increase because they could cause a decline in voluntary compliance. Pascrell and Rice asked for confirmation that a single mother claiming the EITC is four-times as likely to be audited than someone earning \$450,000 annually. McTigue confirmed this. Pascrell and Rep. Gregory Murphy (R-NC) asked why the IRS disproportionately audits low-income taxpayers rather than dedicating resources to high-income audits. McTigue said the IRS attempts to balance audit rates among income levels, but the EITC has high improper payment rates that amounted to \$19 billion in the most recent fiscal year. He emphasized that audits are a tool to ensure compliance and that there are no third-party tools to ensure eligibility for the program. Pascrell asked if an EITC-eligible taxpayer defaults if they do not respond to IRS correspondence. McTigue confirmed that if the IRS does not receive a response, the potential refund is held. Rep. Judy Chu (D-CA) asked how the retirement of 15% of auditors in the next three years will impact the capacity of the IRS to audit high earners. McTigue said auditing high-income individuals requires more skill that might require a year of training plus four to five years of experience to obtain the proper knowledge to conduct the audit. Rep. Steven Horsford (D-NV) asked how many people were audited who earn over \$10 million. McTigue said there were over 24,000 returns submitted by people who have a total income of at least \$10 million and that the IRS audited 1,000 of those returns in 2019. Reps. Stacey Plaskett (D-VI) and Horsford asked if the IRS should dedicate more resources towards auditing high-income households. McTigue said in 2013, the GAO recommended the IRS examine total direct income from the audit versus the cost of conducting the audit and suggested

the IRS increase the revenue collected to have more productive audits. He said the IRS began to implement a model that considers the return on investment for small business correspondence audits and noted that \$110 billion of the \$245 billion under reported is related to schedule C income.

- **Earned Income Tax Credit:** Rice asked for confirmation on the error rates of the EITC. McTigue confirmed that error rates are 25%. Rice mentioned the Taxpayer Protection and Preparer Proficiency Act and asked if McTigue agreed with regulating paid return preparers. McTigue agreed and cited a 2014 study that found only one-in-19 tax preparer offices correctly answered a tax liability question. Chu asked how the Taxpayer Experience Office helps EITC filers when responding to audits. Corbin said the office offers a combination of education and outreach, fair notices and interaction with IRS community partners.
- **Taxpayer Experience:** Pascrell asked what the IRS will do to improve the taxpayer filing experience for low- and moderate-income taxpayers. Corbin said the first step is providing taxpayers with education and outreach while interacting with community partners. Rep. Bradley Schneider (D-IL) asked how the taxpayer experience is defined. Corbin said the taxpayer experience needs to be a human-centric design that looks at a variety of taxpayer journeys in order to improve government trust. Rep. Plaskett asked what the IRS is doing to improve the experience of taxpayers in the U.S. territories. Corbin said the IRS is working with people on the ground to provide education around available programs. Rep. Carol Miller (R-WV) asked how the IRS plans to handle the influx of calls when taxpayers receive the 1099-K form. Corbin said the IRS is focusing on ensuring it is caught up on account change work so it can meet call demand while using call-back technology to reduce hold time. He also said outreach and education around the 1099-K form is important.
- **Tax Returns:** Pascrell asked about the status of IRS backlogs. Corbin said the IRS began calendar year 2022 with 8.2 million paper returns and had 1.7 million as of May 7, 2022. He stressed the importance of surge teams to process returns and thanked Congress for supplying the IRS with new hiring tools. Murphy asked how much in total was owed in tax returns. Corbin said the average refund amount is \$3,000. Rep. Danny Davis (D-IL) asked what steps the IRS is taking to allow individuals to file for refundable tax credits after the normal deadline. Corbin said the IRS will continue to reach out and talk with nonprofits to ensure people in different life circumstances, such as homeless youth, can file a free return with the IRS and claim refundable tax credits.

Next Steps

Pascrell called for the replacement of IRS Commissioner Charles Rettig and the closing of loopholes in federal tax laws. Rice did not express interest in additional hearings relating to audit rates, but he said Congress should play a role in solving the problems with the administration of the EITC.