
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

June 12, 2020

Reference Number: 2020-30-027

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HIGHLIGHTS

TAX RETURN PREPARERS WITH DELINQUENT TAX RETURNS, TAX LIABILITIES, AND PREPARER PENALTIES SHOULD BE MORE EFFECTIVELY PRIORITIZED

Highlights

Final Report issued on June 12, 2020

Highlights of Reference Number: 2020-30-027 to the Commissioner of Internal Revenue.

IMPACT ON TAXPAYERS

Paid tax return preparers (preparers) serve an important role in the U.S. tax system as they prepare approximately 60 percent of all tax returns filed, and their actions have an enormous impact on the IRS's ability to administer the tax laws effectively. When preparers cannot manage their own tax affairs, or worse, if they intentionally claim credits and deductions to which they are not entitled, they could undermine the tax administration system.

WHY TIGTA DID THE AUDIT

As of November 2018, the IRS's Return Preparer Database showed that more than 30,000 preparers self-identified as being tax noncompliant on their Preparer Taxpayer Identification Number (PTIN) applications during Tax Years 2011 through 2018. This audit was initiated to evaluate the IRS's actions taken to ensure that preparers are in compliance with their tax obligations.

WHAT TIGTA FOUND

Our analysis of the Return Preparer Database as of November 2018 identified 10,495 preparers who prepared more than 2 million tax returns for clients in Processing Year (PY) 2016, but did not file a corresponding Tax Year 2016 personal tax return to report income received. TIGTA further identified the top 100 nonfiler preparers from the 10,495 preparers based on the number of returns prepared for clients in Tax Year 2016 using their PTIN information. These top 100 preparers prepared from approximately 1,000 to 6,000 tax returns for clients in PY 2016.

TIGTA estimates that each of the 100 preparers potentially received compensation from clients for the preparation of tax returns in PY 2016 from more than \$189,000 to more than \$1 million. In addition, TIGTA estimates \$45.6 million in potential taxes could be assessed if the IRS worked 6,903 of preparer nonfiler cases. After reviewing a draft of this report, IRS management informed us they had taken action and had included 449 of these nonfiler preparers in their Fiscal Year 2020 Examination Plan.

Our analysis of delinquent preparer penalty and tax modules as of May 27, 2019, showed the majority were in active collection status. However, a significant portion of the modules were not in active status because they were in Currently Not Collectible (CNC) status or were in the Queue awaiting assignment to the Collection function. Analysis of these modules showed there were high-priority preparer penalty modules in CNC shelved status, preparers in CNC hardship status likely earning significant income, and high-dollar modules aging in the Queue. In addition, the IRS's new nonfiler strategy does not include specific items to address preparers who have failed to file their own tax returns that are due, and the current preparer misconduct strategy does not provide specific direction on how the IRS might address preparers who are nonfilers or have balances due for their own tax accounts.

WHAT TIGTA RECOMMENDED

TIGTA made 11 recommendations to help the IRS identify and address preparer nonfilers and high-risk preparers with balance due tax liabilities and preparer penalties. The IRS agreed or partially agreed with six of the recommendations and plans to take corrective action such as updating the Internal Revenue Manual to include the Return Preparer Database as a recognized internal source for identification and referral of preparer nonfilers to the Examination function. The IRS disagreed with five recommendations. TIGTA believes these recommendations will help the IRS to identify and address preparer nonfilers who do not fall into the normal work streams and hold preparers accountable for their own delinquent penalty and tax liabilities.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 12, 2020

MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized (Audit # 201830039)

This report presents the results of our review to evaluate the Internal Revenue Service's actions taken to ensure that tax return preparers are in compliance with their tax obligations. This audit is included in our Fiscal Year 2020 Annual Audit Plan and addresses the major management and performance challenge of Improving Tax Reporting and Payment Compliance.

Management's complete response to the draft report is included as Appendix VI.

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Table of Contents

<u>Background</u>	Page 1
<u>Results of Review</u>	Page 5
<u>Thousands of Nonfiler Preparers Are Not Being Addressed</u>	Page 5
<u>Recommendation 1:</u>	Page 10
<u>Recommendations 2 through 5:</u>	Page 11
<u>Recommendation 6:</u>	Page 12
<u>Preparers With Preparer Penalties and Unpaid Tax Liabilities Need More Attention</u>	Page 12
<u>Recommendations 7 and 8:</u>	Page 21
<u>Recommendations 9 and 10:</u>	Page 22
<u>The Servicewide Preparer Strategy Still Needs to Be Finalized With Details to Prioritize Preparers' Noncompliance With Their Own Tax Return Filings and Delinquent Liabilities</u>	Page 23
<u>Recommendation 11:</u>	Page 24
 Appendices	
<u>Appendix I – Detailed Objective, Scope, and Methodology</u>	Page 25
<u>Appendix II – Major Contributors to This Report</u>	Page 27
<u>Appendix III – Report Distribution List</u>	Page 28
<u>Appendix IV – Outcome Measure</u>	Page 29
<u>Appendix V – Glossary of Terms</u>	Page 32
<u>Appendix VI – Management's Response to the Draft Report</u>	Page 34



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Abbreviations

ACS	Automated Collection System
CI	Criminal Investigation
CNC	Currently Not Collectible
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
PSP	Planning and Special Programs
PTIN	Preparer Tax Identification Number
PY	Processing Year
RPD	Return Preparer Database
SB/SE	Small Business/Self-Employed
TIGTA	Treasury Inspector General for Tax Administration
TY	Tax Year



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

Background

Paid tax return preparers (hereafter referred to as preparers) serve an important role in the U.S. tax system as they prepare approximately 60 percent of all tax returns filed, and their actions have a substantial impact on the Internal Revenue Service's (IRS) ability to administer tax laws effectively. In a prior report on preparers, the Treasury Inspector General for Tax Administration (TIGTA) noted that more than 26,000 preparers stated on their Preparer Tax Identification Number (PTIN)¹ applications that they were not in compliance with their Federal tax obligations.² Because of the critical role preparers have in helping taxpayers comply with the tax laws, it is important that the IRS addresses those preparers who are not in compliance with their tax responsibilities, including those not filing their own tax returns and/or not paying their own tax and preparer penalty liabilities.

In Fiscal Year (FY) 2010, the IRS created the Return Preparer Office with a mission to improve taxpayer compliance by providing comprehensive oversight and support of preparers. At the time, the IRS was involved in an extensive regulatory effort to hold preparers accountable for their actions, including checking for preparer tax compliance when processing their PTIN applications. Paid preparers use a PTIN, which became mandatory in FY 2010, on returns they prepare for compensation rather than a Social Security Number, in part, to protect their personal and private information. Additionally, the IRS stated that:

The requirement to use a PTIN will allow the IRS to better identify tax return preparers, centralize information, and effectively administer the rules relating to tax return preparers. The final regulations will also benefit taxpayers and tax return preparers and help maintain the confidentiality of SSNs.³

However, in Calendar Year 2014, the United States Court of Appeals for the D.C. Circuit ruled in the case *Loving v. IRS* that return preparation does not constitute practice before the IRS and that preparers are not "representatives;" therefore, unenrolled preparers, those who prepare tax returns but do not have the authority to represent their clients before the IRS, cannot not be regulated by the IRS under 31 U.S.C. 330.⁴

Prior to the *Loving* ruling, the Return Preparer Office conducted tax compliance checks for both enrolled and unenrolled preparers. Post *Loving*, unenrolled preparers no longer receive tax

¹ See Appendix V for a glossary of terms.

² TIGTA, Ref. No. 2018-30-042, *The Internal Revenue Service Lacks a Coordinated Strategy to Address Unregulated Return Preparer Misconduct* p. 23 (July 25, 2018).

³ 75 F.R. 60309 (Sept. 30, 2010). SSN = Social Security Number.

⁴ Pursuant to 31 U.S.C. § 330, the IRS is authorized to "regulate the practice of representatives of persons before the Department of the Treasury," and the court held that tax return preparation does not constitute representing persons before the IRS. *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014).



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

compliance checks on PTIN applications.⁵ While the IRS still has the responsibility to hold unenrolled preparers accountable for misconduct, it does not refuse to issue a PTIN if the preparer is not in tax compliance.⁶ In response to a recommendation in our prior TIGTA report, the IRS is developing a Servicewide Preparer Strategy designed to encourage programs with the authority to address preparer misconduct to coordinate with one another to establish program goals and track progress toward those goals.⁷ However, there is currently no strategy to prioritize and address preparers who are not in compliance with their own tax obligations.

While preparers are required to file their personal tax returns and pay any outstanding tax and penalty liabilities just like any other taxpayer, they have an important responsibility in tax administration because they have an impact on the tax compliance of others. When preparers cannot manage their own tax affairs, or worse, if they intentionally claim credits and deductions to which they are not entitled, they could undermine the tax administration system.

The IRS's Criminal Investigation (CI) in cooperation with the Department of Justice has a dedicated preparer program that focuses investigations on unscrupulous preparers. CI's Annual Report describes numerous taxpayers who were investigated and successfully prosecuted.⁸ For example, CI stated that its agents engage in undercover "shopping" efforts to identify unscrupulous preparers. CI special agents investigated a preparer who was found guilty after prosecution for falsifying earnings in home cleaning businesses on tax returns so that taxpayers could fraudulently claim the Earned Income Tax Credit. A search warrant uncovered "cheat sheets" that employees used to further the tax fraud. In another case, CI investigated a tax preparer who was found guilty of fraudulent tax return preparation and defrauding the Deepwater Horizon Oil Spill Trust Fund, sentenced to seven years in prison, and ordered to pay approximately \$7 million in restitution.

The Small Business/Self-Employed (SB/SE) Division's Examination function has also moved towards making preparer issues more of a priority. The SB/SE Division Examination function's FY 2019 Program Letter describes its preparer focus as follows:

Return Preparer Strategy – To affect and improve return preparer compliance, Exam will lead a cross-functional team to implement a comprehensive, Servicewide Return Preparer Strategy focused on education, compliance/enforcement and return preparer oversight. Additionally, the strategy may identify appropriate legislative proposals for consideration.

⁵ Regulated tax return preparers are subject to certain qualifying standards that can involve educational prerequisites, qualifying examinations, and continuing professional education. This includes attorneys, Certified Public Accountants, and enrolled agents (including enrolled actuaries, enrolled retirement plan agents). However, other tax return preparers are unenrolled and can prepare returns without meeting any training and education requirements.

⁶ An example of preparer misconduct is when preparers deliberately understate their clients' tax liabilities.

⁷ TIGTA, Ref. No. 2018-30-042, *The Internal Revenue Service Lacks a Coordinated Strategy to Address Unregulated Return Preparer Misconduct* p. 16 (July 25, 2018).

⁸ IRS: Criminal Investigation Annual Report 2018.



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

However, the SB/SE Division Collection function generally pursues preparers' delinquent tax liabilities just like every other taxpayers' liabilities within the SB/SE Division's Collection function. Other parts of the IRS have special programs that focus on negligent and unscrupulous preparers, but there is no special program or effort in the Collection function to ensure that assessed penalties and taxes on preparers are collected. The process to collect taxes and penalties owed by preparers is the same as it is to collect from other taxpayers. As previously reported, this process typically involves the notice stream, in which a series of automated notices are issued, and can involve other parts of the collection process, including the Automated Collection System (ACS), the Field Collection function, and the Collection Queue (Queue).⁹

- The notice stream involves a series of systemic balance due or delinquent return notices requesting payment or the filing of the delinquent return; or for the taxpayer to contact the IRS if he or she disagrees with the balance due or is unable to pay the delinquency or believes that he or she is not liable to file the tax return.
- The ACS is an inventory of delinquencies that may realize a benefit from a variety of systemic actions in an attempt to prompt payment and bring taxpayers into compliance. These include but are not limited to systemic notice issuances and systemic enforcement actions such as levies and Notice of Federal Tax Lien filings. This Collection function is also characterized by telephone contact, primarily inbound, initiated through the use of the systemic notice issuances and enforcement actions.
- The Field Collection function consists of revenue officers who work cases in their inventory by initiating personal contact with taxpayers to secure unfiled tax returns; discuss payment options; or take enforcement action, including levies, liens, and seizures of taxpayer property.
- The Queue is an inventory of unassigned delinquent cases. The majority of inventory assigned to the Field Collection function is selected from available inventory within the Queue. IRS management considers the Queue as potential inventory for any Collection function. Queue cases are systemically reviewed after 52 weeks without being assigned to any Collection function. If changes to the case do not warrant assignment to a different Collection inventory or function, the only action taken is an annual reminder notice sent to the taxpayer. In addition, cases in the Queue do not undergo systemic actions, such as cases might within the ACS.

In an effort to capture information about preparer activity, the SB/SE Division's Research office developed the Return Preparer Database (RPD). The RPD captures the PTIN application information, which can be used to work taxpayer complaints about preparers, to work preparer penalty cases, and to identify preparers who do not use appropriate identifying numbers when

⁹ TIGTA, Ref. No. 2017-30-069, *Prioritization of Collection Cases Is Inconsistent and Systemic Enforcement Actions Are Limited for Inactive Cases* p. 1 and 2 (Sept. 25, 2017).



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

preparing returns.¹⁰ In addition, the RPD captures statistical data about the number and dollar amount of returns that preparers file for their clients and those preparers who indicate they are not in tax compliance on their new or renewal PTIN applications. This information can help the IRS identify preparer trends and develop strategies to more effectively address preparer noncompliance.

This review evaluated the IRS's collection efforts for delinquent returns, taxes, and penalty liabilities for preparers identified in the RPD as nonfilers, self-attested as tax noncompliant on PTIN applications, and those with assessed preparer penalties. This review was performed with information obtained from the SB/SE Division Examination Headquarters office in Lanham, Maryland; the SB/SE Division Collection Headquarters office in Lanham, Maryland; and the SB/SE Division Research office in Washington, D.C., during the period November 2018 through January 2020. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

¹⁰ The RPD obtains the PTIN application information from the Tax Professional PTIN System.



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

Results of Review

Thousands of Nonfiler Preparers Are Not Being Addressed

The intentional failure to file Federal tax returns is a crime.¹¹ Failure to file tax returns can also be subject to civil fraud penalties.¹² Our analysis of RPD information as of November 2018 identified 10,495 preparers who filed more than 2 million tax returns for clients in Processing Year (PY) 2016, but did not file a corresponding Tax Year (TY) 2016 personal tax return. The average number of taxpayer returns filed by these preparers in PY 2016 was 192. Using the National Society of Accountants 2017 average tax preparation fee of \$176 per return,¹³ we estimate the potential average income for the 10,495 preparers was more than \$33,000 in PY 2016.¹⁴

Our analysis also determined that 5,719 (54 percent) of the 10,495 preparers identified as nonfilers for PY 2016 also prepared returns for clients in PY 2015, averaging 189 returns per preparer. These 5,719 preparers did not file a corresponding TY 2015 individual tax return. While the RPD does not provide the number of returns prepared by preparers prior to PY 2015, many of the 10,495 preparers have not filed their own individual tax return for multiple tax years. For example, 3,555 (34 percent) of the 10,495 preparers have not filed a tax return for four consecutive years.

We also matched the 10,495 nonfiler preparers to the Examination and Collection function inventories to determine if the nonfiler cases identified in the RPD were being worked.¹⁵ We found that only 50 (0.5 percent) of the 10,495 nonfiler preparers were under examination for their TY 2016 returns as of June 30, 2019. In addition, another 516 (4.9 percent) of these nonfiler preparer cases were being worked by the ACS (as of September 10, 2019) or by the Field Collection function (as of August 20, 2019) for TY 2016 balance due tax modules or unfiled tax return delinquencies.

¹¹ Internal Revenue Code (I.R.C.) § 7203.

¹² I.R.C. § 6651(f) provides that, if the failure to file is fraudulent, penalties increase to as high as 75 percent of the tax shown on the return.

¹³ The National Society of Accountants 2017 estimates preparation of non-itemized returns costs taxpayers an average of \$176 and itemized returns costs taxpayers an average of \$273. Our calculation is based on using the most conservative of \$176 per return.

¹⁴ According to IRS management, high-volume preparers may have other staff working for him or her who assist in preparing returns, could be self-employed with business expenses, or could be a wage earner. These situations would potentially lower their compensation.

¹⁵ We reviewed the Audit Information Management System to determine if the nonfiler preparers were under examination and the ACS and Integrated Collection System to determine if the ACS or the Field Collection function were working them.



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

Internal Revenue Code (I.R.C.) Section (§) 6109(a)(4) requires that preparers include an identifying number on returns that they prepare for their clients. The identifying number used as an alternative to a Social Security Number is a PTIN. When the IRS receives a taxpayer's return with a preparer's PTIN included, it is likely that the PTIN owner received compensation to prepare that return. The IRS tracks the number of returns filed for each PTIN issued in the RPD. The data can be used to alert the IRS that the PTIN owner should have filed his or her own Federal tax return. For example, if a preparer's PTIN is used on tax returns prepared for clients in PY 2016, the preparer would likely be required to file a corresponding personal tax return for TY 2016 to report any income earned for preparing those returns.

During FY 2016, TIGTA reported on how the IRS identifies and processes cases for taxpayers who had not filed tax returns and concluded that improvements to the nonfiler program could help the IRS more effectively address additional nonfilers.¹⁶ On May 31, 2018, the IRS released the *IRS Small Business/Self-Employed Nonfiler Strategic Plan*. The plan lists the current nonfiler strategic goals, which are to:

- Identify and prioritize nonfiler work that maximizes dollars collected.
- Promote continued filing compliance through programs built to encourage voluntary taxpayer filing.
- Increase operational efficiencies across existing nonfiler programs.

The plan's stated purpose is to serve as a tool for SB/SE Division leadership as they approach prioritization and decisionmaking around compliance work overall, as well as specifically around short-term and long-term nonfiler work. However, the plan does not include any direction on addressing preparer nonfilers for prioritization or compliance.

Additionally, as part of a TIGTA audit that focused on high-income nonfilers, IRS officials informed us that a Nonfiler Executive Steering Committee, made up of four executives from the SB/SE Division Examination function, four executives from the SB/SE Division Collection function, and one executive from the SB/SE Division Research office, was implemented in December 2018.¹⁷ According to IRS officials, the purpose of the Steering Committee is to oversee the execution of the new nonfiler strategy and, as of October 24, 2019, has met three times since implementation. The Steering Committee is planning to continually meet and oversee the new nonfiler strategy to ensure that the nonfiler program is implemented effectively.

The Steering Committee is a positive step, but it does not address nonfilers IRS-wide and does not address nonfiling preparers at all. The steering committee is also made up of only SB/SE

¹⁶ TIGTA, Ref. No. 2016-30-085, *Improvements to the Nonfiler Program Could Help the Internal Revenue Service More Effectively Address Additional Nonfilers Owing Billions of Dollars in Taxes* p. 10 (Sept. 23, 2016).

¹⁷ TIGTA, Ref No. 2020-30-015, *High-Income Nonfilers Owing Billions of Dollars Are Not Being Worked by the Internal Revenue Service* p. 10 (May 29, 2020).



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

Division executives and lacks any involvement by the Return Preparer Office or CI. CI is responsible for pursuing criminal investigations of the tax laws.

In TIGTA's high-income nonfiler audit, we observed that one way the IRS may be able to achieve efficiency in working high-income nonfiler cases is by creating a team, which consists of Collection and Examination function and CI employees, that specifically focuses on these types of cases to ensure that the appropriate skill set is applied and that these cases will continue to be worked. This team could also focus on preparers who do not file their own tax returns. Therefore, we are including a related recommendation in this audit.

In our review, we found many nonfiler preparers, for which the IRS has not received third-party reporting information to show the amount of income earned by the preparer, can be identified through the RPD. However, the IRS does not use the RPD as a source to pursue enforcement on preparers who do not file their own tax returns. Therefore, unless nonfiler preparers are identified through the Collection function's Case Creation Nonfiler Identification Process or are referred to the IRS from inside or outside sources, a return delinquency module for the tax year in question will not be created and will not proceed to the notice stream or other Collection function programs to be worked.¹⁸

Absence of third-party income information for preparers hinders return delinquency enforcement efforts

Generally, when a return delinquency tax module is created, the nonfiler taxpayer receives a notice reminding them to file a return or for the taxpayer to contact the IRS to explain why he or she is not required to file. If no response is received from the taxpayer, a second notice will be sent. If no response is received from the taxpayer after the second notice, the return delinquency module generally becomes a taxpayer delinquency investigation for the unfiled tax return. The nonfiler case could then be assigned to one of several Collection function work streams.¹⁹ For many nonfiler cases, the IRS uses its I.R.C. § 6020(b) authority to systemically or manually prepare a substitute for return and propose a tax assessment based on the amount of the income reported on the third-party information document received. However, this is not feasible for

¹⁸ The Case Creation Nonfiler Identification Process identifies individual taxpayers from those who filed an individual income tax return the previous year but failed to file a current return, and taxpayers for whom the IRS received third-party Information Returns Program documents. In addition, it identifies business taxpayers that have an open filing requirement for a return that is not filed. Internal Revenue Manual 5.1.11.1.1 (Jan. 15, 2010).

¹⁹ TIGTA has reported over the last several years that the IRS's nonfiler program has had serious lapses, due in part to resources and in part to prioritization of work. TIGTA nonfiler reports include: TIGTA, Ref. No. 2016-30-085, *Improvements to the Nonfiler Program Could Help the Internal Revenue Service More Effectively Address Additional Nonfilers Owing Billions of Dollars in Taxes* (Sept. 23, 2016); TIGTA, Ref. No. 2018-30-060, *The Internal Revenue Service Can More Effectively Address Noncompliance by Better Using and Controlling the Fed/State Program* (Aug. 29, 2018); TIGTA, Ref. No. 2019-30-069, *Billions of Dollars of Nonfiler Employment Taxes Went Unassessed in the Automated 6020(b) Program Due Primarily to Resource Limitations* (Sept. 16, 2019); TIGTA, Ref. No. 2017-30-078, *A Significantly Reduced Automated Substitute for Return Program Negatively Affected Collection and Filing Compliance* (Sept. 29, 2017).



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

many preparers due to the lack of third-party information documents associated with this type of income.

IRS management stated that many nonfiler preparers are not identified through the Case Creation Nonfiler Identification Process because the IRS does not receive corresponding third-party information documents. The IRS uses third-party reporting information, such as Forms W-2, *Wage and Tax Statement*, and various types of Forms 1099 information return documents to identify potential nonfiler taxpayers and create a return delinquency module for the tax year in question.²⁰ The law requires that those engaged in trades and businesses who pay others in that trade or business more than \$600 in a year provide information returns to the IRS.²¹ IRS management believes it does not receive income information returns on many preparers because many taxpayers who use preparers do not pay preparers more than \$600 annually or are not engaged in a trade or business.

Few nonfiler preparers are referred for examination

The IRS may also become aware of a nonfiler preparer if a referral is received from inside or outside sources. The SB/SE Division's Planning and Special Programs (PSP) group works referrals received. For example, an inside referral may come from a PSP group return preparer coordinator who is developing a case on a preparer for improper tax filings for clients and discovers the preparer did not file a personal tax return. The coordinator could then make a referral on Form 5346, *Examination Information Report*, and send it to the PSP information returns coordinator. The information returns coordinator would then send the case to the Field Examination function, which would contact the preparer to determine the amount of income he or she received for preparing tax returns and calculate a tax liability assessment. However, although the Internal Revenue Manual (IRM) provides guidance for referrals for return preparer coordinators, there is no guidance included to refer nonfilers to the Examination function.²²

Referrals could also come from other internal and external sources, such as the public, the Return Preparer Office, or Examination function employees themselves. Figure 1 shows the number of preparer nonfiler referrals made by these sources from FYs 2016 through 2018.

²⁰ There are many versions of Form 1099 to report income to the taxpayer and the IRS. For example, Form 1099-MISC, *Miscellaneous Income*, and Form 1099-DIV, *Dividends and Distributions*.

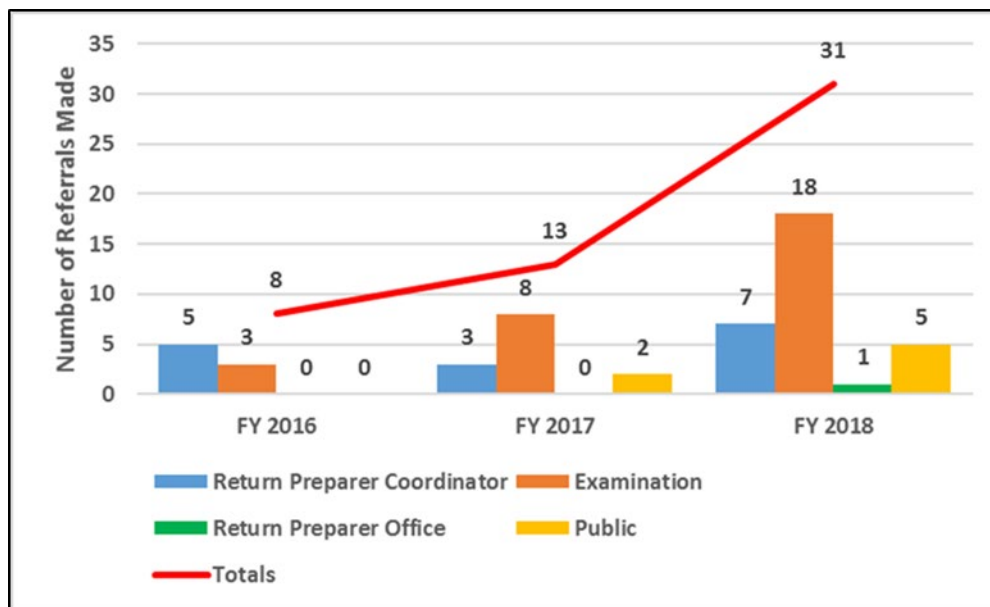
²¹ I.R.C. § 6041A.

²² IRM 4.11.51.7 (Sept. 23, 2016).



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

Figure 1: Preparer Nonfiler Referrals



Source: SB/SE Division Examination function.

Although nonfiler preparer referrals increased from FYs 2016 through 2018, there were only a total of 52 referrals made for nonfiler preparers for the three fiscal years. The majority (29) of the referrals came from the Examination function. The IRS further stated that there were 4,857 total nonfiler referrals for FYs 2016 through 2018. Therefore, the 52 preparers referred accounted for only 1.1 percent of all nonfiler referrals.

The IRS could use RPD information we used in our review to identify preparer nonfilers and develop a process to take enforcement action. The IRS can use the preparer's PTIN in the RPD to track the number of client returns filed by the preparer each processing year. Currently, the IRM does not include the RPD as a source for PSP staff to identify nonfiler preparers.²³ With so few preparer nonfiler referrals each year, the PSP group could identify preparers who do not file their tax returns through the RPD.

From the population of 10,495 nonfiler preparers, we identified the top 100 nonfiler preparers based on the number of returns prepared for clients in PY 2016 using their PTIN information.²⁴ Our analysis showed these top 100 prepared more than 1,000 to more than 6,000 tax returns for clients for PY 2016. Using an average fee of \$176 for tax return preparation,²⁵ we estimate that

²³ IRM 4.1.5.1.4 (Oct. 20, 2017).

²⁴ We excluded 50 preparers that had identity theft indicators or were under IRS review (examination or collection) and replaced them.

²⁵ The National Society of Accountants 2017 estimates preparation of non-itemized returns costs taxpayers an average of \$176 and itemized returns costs taxpayers an average of \$273. Our calculation is based on using the most conservative fee of \$176 per return.



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

each of the 100 preparers potentially received compensation from clients for the preparation of tax returns in PY 2016 from approximately \$189,000 to more than \$1 million.²⁶

Based on the large number of returns prepared with no tax return filed, there is a high risk that these preparers are not reporting significant income. These preparers should be prioritized and referred to the Examination function, or where appropriate, to determine the amount of income they should have reported on their tax returns for the years identified. We further estimate that if the IRS worked 6,903 of these nonfiler preparer cases for TY 2016, a potential \$45,643,862 in taxes could be assessed.²⁷

Management Action: IRS management informed us the Examination function began analyzing the population of identified nonfiler preparers for the Examination plan as a result of this audit. After reviewing a draft of this report, management informed us they had taken action and have included 449 of these nonfiler preparers in their FY 2020 Examination Plan.

Recommendations

The Commissioner, SB/SE Division, should:

Recommendation 1: Update the *IRS Small Business/Self-Employed Nonfiler Strategic Plan* to include identifying and prioritizing nonfiler preparers for examination.

Management's Response: The IRS partially agreed with this recommendation, but disagreed with the related outcome measure (see Appendix IV for more detailed information on the reported outcome measure). Specifically, the IRS cited resource issues for making program changes to systemically identify nonfiler preparers from the RPD, which would have limited scope and impact on tax administration. The IRS also stated that this year (and it is planned for future years also), the Examination function is using the RPD and PTINs to manually identify preparers who are nonfilers and is working a number of those cases.

Office of Audit Comment: We disagree that the ability to systemically identify tax return preparers who do not even file their own tax returns would have a limited scope or impact on the tax administration. Furthermore, as identified in our report, use of the RPD can and has already identified nonfiler tax return preparers. In their agreement to Recommendations 2 and 3, the IRS acknowledges that the RPD is a recognized internal source and PSP coordinators will refer identified nonfilers to the Examination function. These agreed upon changes should be included in the *IRS Small Business/Self-Employed Nonfiler Strategic Plan*.

²⁶ According to IRS management, high-volume preparers may be preparing simpler returns, so the average fee could be lower. In addition, the individual PTIN holder's situation is unknown. For example, the preparer could have other staff working for him or her who assist in preparing returns, could be self-employed with business expenses, or could be a wage earner. These situations would potentially lower their compensation.

²⁷ See Appendix IV for more details on this calculation.



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Recommendation 2: Update IRM 4.1.5 to include the RPD as a recognized internal source for Examination function case building.

Management's Response: The IRS agreed with this recommendation and will update IRM 4.1.5 to include the RPD as a recognized internal source for Examination function case building.

Recommendation 3: Update IRM 4.11.51.7 to include guidance for PSP return preparer coordinators to identify nonfiler preparers and provide them to the Examination function to review.

Management's Response: The IRS agreed with this recommendation and will update IRM 4.11.51.7 to include guidance for PSP return preparer coordinators to refer preparer nonfilers for examination.

Recommendation 4: Refer the top 100 preparers that we identified as high-risk nonfilers, as appropriate, to revenue officers in the Collection Field function, to revenue agents in the Examination function, or special agents within CI for enforcement action.

Management's Response: The IRS agreed with this recommendation. As stated in this report, the IRS took actions in response to this finding by including the nonfiler work stream in its FY 2020/2021 Field Exam Plan Assumptions. As of March 2020, 37 of the 100 preparers identified by TIGTA were in the process of case-building for examination. The IRS stated that the remaining cases TIGTA identified did not meet its examination criteria, *e.g.*, the preparer had filed a return, the preparer was subject to another compliance action, or the case did not meet the materiality threshold. In addition, the Collection function will refer to the Field Collection function the nonfiler taxpayer cases that are not in a substitute for return treatment stream or being worked by the Examination function or CI.

The Deputy Commissioner, Services and Enforcement, should:

Recommendation 5: Consider a reallocation of resources to ensure that most, if not all, tax return preparer nonfilers are subject to enforcement action, such as creating a team of revenue officers, revenue agents, and special agents that specifically focus on nonfilers who present a high risk to tax administration.

Management's Response: The IRS disagreed with this recommendation. In making resource allocation decisions, the IRS stated that it must balance preparer noncompliance with other competing priorities and that resource allocation decisions cannot be viewed in isolation, but rather as part of a balanced approach. The IRS also noted that it would be unable to work other high-priority cases, such as taxpayers who are repeatedly failing to pay their employment taxes, by working every noncompliance preparer case.

Office of Audit Comment: Given the IRS's resource constraints, it is that much more important for the IRS to consider, as part of its strategic approach, how to best allocate its



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

resources to promote taxpayer compliance. Its balanced approach should emphasize tax return preparers who do not file their own tax returns. These return preparers present a significant individual compliance risk, and they also present a risk to the taxpayers for who they prepare tax returns.

Recommendation 6: Consider including executive level leadership from the Return Preparer Office and CI on the Nonfiler Executive Steering Committee.

Management's Response: The IRS agreed with this recommendation and will extend invitations to the Return Preparer Office and to CI.

Preparers With Preparer Penalties and Unpaid Tax Liabilities Need More Attention

Many preparers have outstanding liabilities from assessments of preparer penalties due to preparer misconduct. In addition, there are preparers with outstanding tax liabilities that are the result of unpaid taxes on their income from tax return preparation and from other income sources. According to IRS management, the IRS identifies *****2*****
*****2*****
*****2*****.²⁸

Using the RPD, the IRS provided us with information on those preparers who had been assessed a preparer penalty for misconduct in PYs 2010 through 2017 and those preparers who had self-attested to being tax noncompliant on their TYs 2011 through 2018 PTIN applications. We matched these two populations to the IRS Individual Master File to identify whether the preparers had any delinquent penalty or tax liabilities. We then analyzed the collection status of these preparer penalty and tax modules to determine if the IRS was taking collection actions on these modules.

Our analysis showed that as of May 27, 2019, the majority of these preparer penalty and tax modules were in active collection status. However, a significant portion of the modules were not in active status because they were in CNC status or were in the Queue awaiting assignment to the Collection function. Analysis of these modules showed there were:

- High-priority preparer penalty modules in CNC shelved status.
- Preparers in CNC hardship status likely earning significant income.
- High-dollar modules aging in the Queue.

²⁸ The ENTITY Case Management System is a current database with the Field Collection function inventory, which includes prioritization business rules for taxpayer delinquent accounts.



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

Preparers with assessed penalties

Preparer penalties are assessed for different reasons, including aiding and abetting the understatement of a client's tax liability.²⁹ TIGTA previously reported that most assessed preparer penalties are never collected. Specifically, from Calendar Years 2012 through 2015, the IRS resolved an average of 49 percent of the modules (including closures designated as CNC or installment agreement) and collected just \$46.3 million (15 percent) of the \$317.2 million of penalties assessed on individual preparers.³⁰ The IRS Collection function could play an important role in holding these preparers accountable for any misconduct and can ensure that the penalties have the maximum impact by collecting the assessed preparer penalties.

Using the RPD, the IRS provided a list in November 2018 of 9,704 preparers who were assessed preparer penalties in PYs 2010 through 2017. We matched the list to the IRS Individual Master File as of May 27, 2019, and identified a population of 12,683 preparer penalty modules (6,251 preparers) consisting of TYs 2010 through 2019. Analysis of the 12,683 penalty modules showed that 6,827 (54 percent) penalty modules (4,393 preparers) had delinquent balances totaling more than \$280 million. Additionally, we identified 5,856 (46 percent) modules that had a zero or credit balance. Of the zero/credit balance modules, 2,467 (42 percent) were paid in full, while the other 3,384 (58 percent) had no status.³¹

Preparer penalty modules with a balance due – collection status

Figure 2 provides the breakdown of the collection status of the 6,827 penalty modules with a balance due.

²⁹ I.R.C. § 6701.

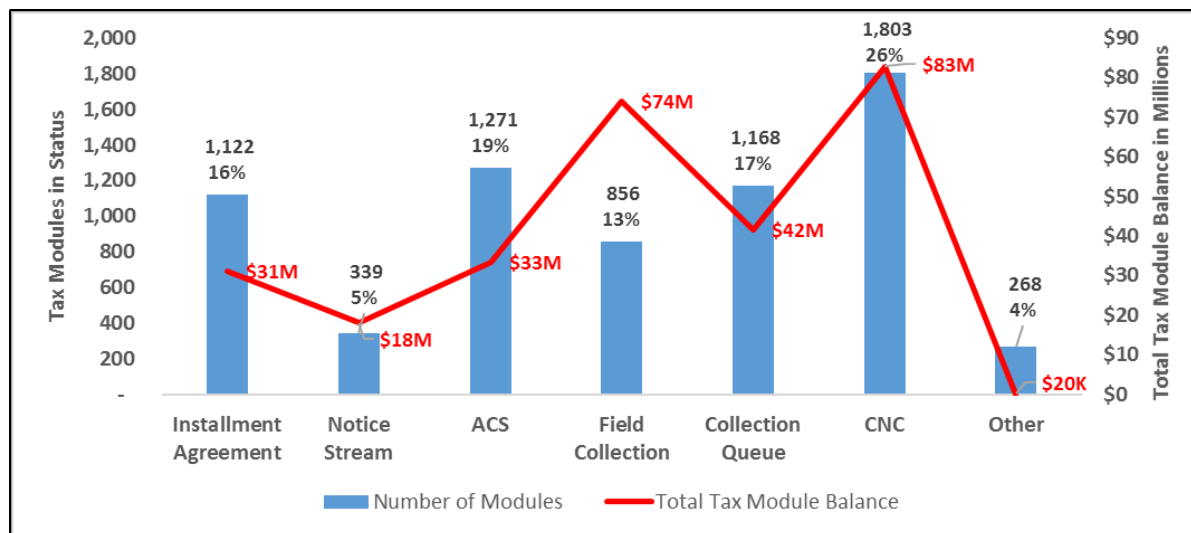
³⁰ TIGTA, Ref. No. 2018-30-042, *The Internal Revenue Service Lacks a Coordinated Strategy to Address Unregulated Return Preparer Misconduct* p. 15 (July 25, 2018).

³¹ The remaining five modules were in installment agreement, the ACS, the Field Collection function, or transferred out statuses. According to the IRS, the credit balance penalty modules were due to estimated tax payments, and the modules will be addressed once the returns are filed. In addition, the IRS stated that the zero balance penalty modules with no status were not penalty modules, but were actually modules created to temporarily store the installment agreement user fees collected from taxpayers. The IRS deducts the user fee amount out of the installment agreement payments that are posted to relevant balance due module(s) and stores it on the zero balance civil penalty module where it is then moved into an accounting fund for these fees.



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

Figure 2: Status of Preparer Penalty Balance Due Modules³²



Source: TIGTA analysis of RPD data received from the IRS in November 2018 and Individual Master File data as of May 27, 2019.

Our analysis shows that 53 percent of preparer penalty modules with a balance due are either being paid by preparers through an installment agreement, in the notice stream, in ACS inventory, or in the Field Collection function. However, as of May 27, 2019, many penalty modules with a balance due were not actively being collected because they were in CNC status (26 percent) or in the Queue (17 percent) waiting assignment to the Field Collection function.

Preparers who self-attested as tax noncompliant

When preparers apply or renew their PTIN, the application includes notification to the applicant “that as a PTIN holder, you are expected to be in compliance with federal tax laws and timely file all returns and pay all taxes, or make acceptable payment arrangements.” In addition, the application requires the applicant to respond to the question: “Are you current with your federal individual and business taxes including any corporate and employment tax obligations?” If the applicant responds “No,” he or she is required to provide an explanation in a comment box provided. This information is tracked in the RPD; however, the IRS Collection function does not have access to or use this information to identify preparers with delinquent tax and penalty modules.

In November 2018, the IRS provided a list of 30,385 preparers identified from the RPD who responded “No” to the question of whether they were current with their Federal individual or business taxes on one or more of their PTIN applications during TYs 2011 through 2018.³³

³² The “Other” category includes Module Balance Below Tax Delinquent Account/Balance Due Tolerance, Collection Action Suspended, Extension of Time to File, Paid in Full, and those with no status.

³³ Our review only analyzed preparers’ individual tax returns.



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

These preparers had also prepared at least one client tax return in PYs 2015, 2016, or 2017. We matched the self-attested noncompliant preparers to the IRS Individual Master File data as of May 27, 2019, to identify those preparers who had one or more delinquent modules. Our analysis identified 61,011 modules ranging from TYs 2010 through 2019, representing 10,423 self-attested noncompliant preparers.³⁴ Figure 3 shows a breakdown of the general status of these modules.

Figure 3: Status of Preparers Modules Who Self-Attested As Noncompliant³⁵

Status	Number of Tax Modules	Return Filed - Balance Due or Overpayment	Balance Due or Credit Amount
Balance Due	14,154	\$80,209,988	\$142,437,663
Full Paid	21,650	\$15,931,677	(\$747,945)
Returns Not Filed	18,680	\$49,471	(\$33,790,808)
No Status	6,492	\$17,648	(\$2,393,532)
Installment Agreement/ACS/ Field/Collection Queue	35	\$441,983	(\$122,265)
Total	61,011	\$96,650,767	\$105,383,113

Source: TIGTA analysis of RPD data received from the IRS in November 2018 and Individual Master File data as of May 27, 2019.

Further analysis of the 61,011 modules showed that 14,154 (23 percent) modules had a current balance due, representing 4,554 self-attested noncompliant preparers. The remaining 46,857 (77 percent) modules, representing 10,283 preparers, had a zero (42,934) or a credit (3,923) balance.³⁶ About one-half of the zero/credit balance modules were fully paid by the preparer; however, there were many modules in an unfiled tax return status or with no status. According to the IRS, the modules with a credit balance that were unfiled returns had not been resolved at the time of our analysis for many different reasons, including because a tax return had not yet been filed, the account was in the process of being resolved by various treatment streams, or there was a hold on the account. In addition, the IRS stated that the delinquent modules with no status were because no transaction had posted yet to the module.

³⁴ We excluded any self-attested modules older than TY 2010 because the Collection Statute Expiration Date has likely expired.

³⁵ There are various reasons why some statuses could have a credit amount in the “Balance Due or Credit Amount” column. However, of the 18,680 tax modules that are in the “Returns Not Filed” status, there were 13 tax modules that had a tax return posted after the status code date. Therefore, the \$49,471 under “Return Filed - Balance Due or Overpayment” amount is only for those 13 modules for which a return had been filed after the modules were already classified as not having a return on file.

³⁶ The majority (2,466 or 63 percent) of the 3,923 credit balance modules are due to estimated tax payments on tax years in which preparers requested an extension to file.

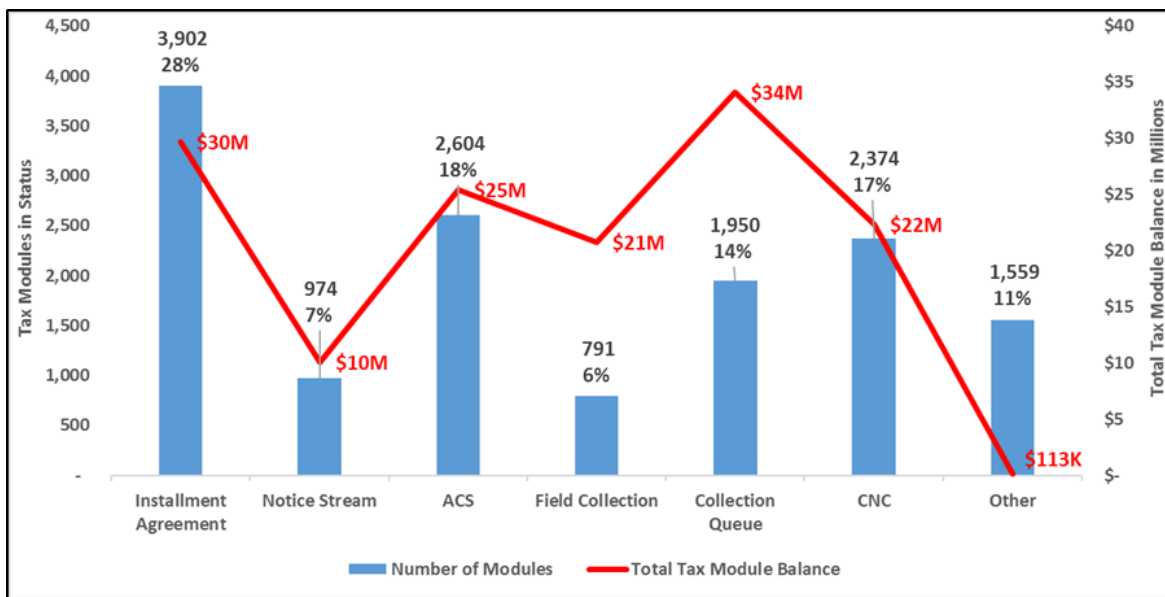


Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

Preparers with balance due modules who self-attested as noncompliant – collection status

Figure 4 shows our analysis of the collection status of the 14,154 delinquent modules with a balance due as of May 27, 2019.

**Figure 4: Status of Balance Due Modules for Preparers
Who Self-Attested As Noncompliant³⁷**



Source: TIGTA analysis of RPD data received from the IRS in November 2018 and Individual Master File data as of May 27, 2019.³⁸

The majority (87 percent) of the 14,154 balance due modules for self-attested preparers are tax liabilities resulting from a Form 1040, *U.S. Individual Income Tax Return*, liability and 13 percent are penalty liabilities. Collection status codes show that 59 percent of balance due modules for self-attested preparers are either being paid by preparers through an installment agreement, in the notice stream, in ACS inventory, or in the Field Collection function. However, as of May 27, 2019, many balance due modules were not being actively collected because they were in CNC status (17 percent) or were in the Queue waiting assignment to either the ACS or the Field Collection function (14 percent).

³⁷ The “Other” category includes Module Balance Below Tax Delinquent Account/Balance Due Tolerance, Collection Action Suspended, Extension of Time to File, Paid in Full, and those with no status.

³⁸ The percentages do not total to 100 percent due to rounding.



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

Hundreds of high-priority penalty modules and delinquent modules of preparers who self-attested as noncompliant were CNC shelved

The IRM states that the Inventory Delivery System can *****2*****
*****2*****.³⁹ In addition, the IRS can move balance due modules into CNC shelved status when they do not have the available resources to work them. Shelved modules are generally no longer actively worked by the IRS, but will reactivate in certain situations, such as when the taxpayer has a new balance due or delinquent return module.⁴⁰ In addition, CNC shelved cases are available to be worked by the Private Debt Collection program.⁴¹

Our analysis found that as of May 27, 2019, 519 (29 percent) of CNC preparer penalty modules and 1,282 (54 percent) of CNC delinquent tax/penalty modules for preparers who self-attested as noncompliant were in shelved status. Figure 5 provides details of the shelved modules.

***Figure 5: CNC Shelved - Preparer Penalty Modules and
Delinquent Modules of Preparers Who Self-Attested As Noncompliant***

	Penalty Modules	Penalty Dollars	Self-Attested Delinquent Modules	Self-Attested Delinquent Dollars
Total CNC Shelved	519	\$10,048,524	1,282	\$8,352,486
Average CNC Shelved		\$19,361		\$6,515
Balance Over \$10,000	263	\$8,703,186	166	\$5,092,826

Source: TIGTA analysis of the RPD data received from the IRS in November 2018 and Individual Master File data as of May 27, 2019.

As previously discussed, the IRS prioritizes preparer penalty modules *****2*****
*****2*****, as well as those preparers with any penalty liability amount in combination with another delinquent tax liability or return. However, our review identified hundreds of preparers' penalty modules in shelved status that were *****2*****
Specifically, there were 263 (51 percent) of 519 preparer penalty modules *****2*****
*****2***** representing \$8.7 million, that were CNC shelved. In addition, 166 (13 percent) of 1,282 self-attested preparer balance due modules that were *****2*****
2 representing \$5.1 million, were shelved.

IRS management stated that not all high-priority cases are assigned to be worked because managers have to consider their available resources and level of staff experience. In addition,

³⁹ IRM 5.16.1.1.3(7) (Sept. 18, 2018).

⁴⁰ IRM 5.16.1.2(7) (Sept. 18, 2018).

⁴¹ As of May 27, 2019, we identified that no preparer penalty modules were being worked by the Private Debt Collection program. IRS management identified that there were 415 preparers associated with the 518 penalty modules and as of February 2020: 178 were currently assigned to the Private Debt Collection program, 40 were previously assigned and have been returned or recalled by the IRS, 15 were no longer in balance due status, and the remaining 182 accounts were either no longer in shelved status or met a Private Debt Collection program exclusion.



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

higher dollar business employment tax modules have a higher priority score, and therefore, they will be assigned first. The IRS needs to ensure that high-priority preparer penalty and tax modules are assigned to the ACS or the Field Collection function to be worked and brought into compliance.

Hundreds of preparers in CNC hardship status appear to be earning income by preparing tax returns for clients

Collection function employees can place a taxpayer in CNC hardship status if the taxpayer is unable to pay reasonable basic living expenses.⁴² This is determined based on completing an analysis of the taxpayer's financial condition and, generally, these cases involve no income or assets, no equity in assets, or insufficient income to make any payment without causing hardship.⁴³ When a taxpayer is placed into CNC hardship status, there are categories of income levels used by Collection function employees to close the case that are dependent upon the taxpayer's individual financial circumstances. The income categories, which range from \$20,000 to \$84,000, are used to prompt the IRS to reopen the CNC hardship modules if the IRS receives income information, from the taxpayer or third parties, to show that the taxpayer is earning income above the hardship category in which he or she was placed.

Our analysis showed that a total of 948 preparers with penalty module balances and 783 preparers (self-attested as tax noncompliant) with module balances were closed as a CNC hardship. Figures 6 and 7 show how many of these preparers were also preparing returns for clients in PYs 2015, 2016, and 2017.⁴⁴

Figure 6: Preparers With Penalty Balances in CNC Hardship

	In PY 2015	In PY 2016	In PY 2017
Count of CNC Hardship Preparers	328	284	265
Total Returns Prepared by CNC Hardship Preparers	127,369	115,770	93,056
Average Returns Prepared by CNC Hardship Preparers	387	406	350
Number of CNC Hardship Preparers With 478 or More Returns Prepared	84	78	67

Source: TIGTA analysis of RPD data received from the IRS in November 2018 and Individual Master File data as of May 27, 2019.

We determined that an average of 292 preparers with penalty balances in CNC hardship prepared an average of 383 tax returns for clients in PYs 2015, 2016, and 2017. In addition, for each of these processing years, an average of 76 preparers prepared more than 478 returns for clients.

⁴² IRM 5.19.17.2.4 (1) and (13) (July 5, 2019). The standard amounts for basic living expenses are established by the IRS and will vary according to the unique circumstances of the individual taxpayer. Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living. There is a systemic process for reactivating hardship CNC modules, which relies on an increase in Taxpayer Positive Income above a predetermined amount, based on the hardship closing code used when the case is closed as CNC.

⁴³ IRM 5.16.1.2.9(1) (Sept. 18, 2018) and IRM 5.19.13.3 (June 6, 2019).

⁴⁴ We did not conduct additional reviews of the preparer cases to determine if the CNC closure procedures were followed. A preparer may have filed returns in more than one processing year.



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

Using the average fee of \$176 per return prepared, 478 returns equates to more than \$84,000 – the highest income range for CNC hardship closures.⁴⁵

***Figure 7: Preparers Who Self-Attested As
Noncompliant With Module Balances in CNC Hardship***

	In PY 2015	In PY 2016	In PY 2017
Count of CNC Hardship Preparers	223	200	180
Total Returns Prepared by CNC Hardship Preparers	36,621	30,041	25,960
Average Returns Prepared by CNC Hardship Preparers	164	150	144
Number of CNC Hardship Preparers With 478 or More Returns Prepared	17	15	14

Source: TIGTA analysis of RPD data received from the IRS in November 2018 and Individual Master File data as of May 27, 2019.

In addition, we determined that an average of 201 preparers (self-attested as noncompliant) with module balances prepared an average of 154 tax returns for clients in PYs 2015, 2016, and 2017. An average of 15 of these preparers prepared 478 or more returns each processing year, which at \$176 per return prepared equates to more than \$84,000. Based on RPD information, these preparers' CNC hardship penalty and tax modules should potentially no longer be in CNC status.

IRS management stated that to close a case as CNC hardship, Collection function staff would have been required to perform a financial analysis and review the preparer's bank records to determine the preparer's income levels. While we did not conduct additional reviews of the preparer CNC cases to determine if CNC closure procedures were followed, our analysis demonstrates that using the RPD can be helpful when making a CNC hardship determination or for monitoring preparers' income levels when they have modules in CNC hardship. In addition, because the IRS does not always receive third-party income information for preparers, these CNC hardship modules may not reopen unless the preparer files a subsequent year tax return to report income above the hardship dollar category.

High-dollar delinquent penalty and tax liabilities are unassigned in the Queue

Our analysis also showed that 1,168 penalty modules representing \$42 million and 1,950 preparers who self-attested as noncompliant with balance due modules representing \$34 million were assigned to the Queue. The average balance due was \$35,580 for penalty modules and \$17,471 for self-attested balance due modules. These preparers' liabilities have been waiting in the Queue for an average of seven months for penalty modules and nine months for self-attested balance due modules.

We further identified the top 100 preparers in the Queue with the highest dollar balances for both the delinquent penalty and self-attested balance due modules. Preparer penalty balances for the

⁴⁵ According to IRS management, high-volume preparers may be preparing simpler returns, so the average fee could be lower. In addition, the individual PTIN holder's situation is unknown. For example, the preparer could have other staff working for him or her who assist in preparing returns, could be self-employed with business expenses, or could be a wage earner. These situations would potentially lower their compensation.



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

top 100 ranged from more than \$98,000 to more than \$758,000, and self-attested balance due module balances for the top 100 ranged from more than \$86,000 to more than \$2.3 million. In addition, RPD information showed that 40 to 50 percent of these preparers prepared 100 or more returns for clients during PYs 2015, 2016, and 2017, potentially earning significant income. The IRS should assign these high-dollar modules in the Queue to be worked by the Field Collection function.

Enforcement actions are being taken, but dollars collected are low

Our analysis also determined that while the IRS is taking enforcement actions on a significant portion of these delinquent preparers, dollars collected are low. Our data show that as of May 27, 2019, 52 percent of the preparer penalty modules had Notices of Federal Tax Lien filed and 55 percent had Notices of Intent to Levy issued. In addition, 25 percent of the delinquent modules for preparers that self-attested as noncompliant had Notices of Federal Tax Lien filed and 31 percent had Notices of Intent to Levy issued. However, only 9 percent of the total current balance due amount was collected for preparers with penalties, and only 18 percent of the total current balance due amount was collected for preparers who self-attested as noncompliant.

The IRS is not using RPD information to determine if the preparer's noncompliance should be considered as a priority for potential collection action. IRS management informed us that they cannot systemically identify preparers in the RPD who are potentially not meeting their tax obligations because there is no indicator on the Integrated Data Retrieval System that could link RPD data to the preparer's account. In addition, management stated that from the concept of fairness in case selection, they cannot focus on just those preparers identified in the RPD as having compliance issues.⁴⁶ Also, for cases in the Queue, IRS management stated that penalty liabilities are already prioritized in the high-priority category, and they are appropriately placed behind the large-dollar and higher dollar business employment tax inventory. Further, the income tax liabilities, if large and recent enough, will also be placed in the high-priority category.

However, we believe the IRS should give more attention to hold preparers accountable when they are not in compliance with the tax laws, and that the RPD should be used as a source to identify preparers that are potentially not meeting their tax obligations. If preparer penalties are imposed in an attempt to stop fraudulent, unscrupulous, and incompetent preparers, the IRS should ensure that these preparers are held accountable for paying these penalties and unpaid tax liabilities.

While the *Loving* court decision does not permit the IRS to bar unregulated preparers from preparing returns if they fail to be tax compliant, the IRS can and should prioritize preparers' tax noncompliance. By not holding preparers accountable for their own tax liabilities and preparer

⁴⁶ IRS management maintained that there are other taxpayers involved in the tax industry, such as those representing taxpayers before the IRS, payroll preparation accounting services, unregulated preparers, and individuals working for tax return preparation corporations who may also have tax compliance issues.



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

penalty balances, these same delinquent preparers may continue to be noncompliant in the future without consequences while continuing to earn income from preparing client tax returns.

Recommendations

The Director, Collection Inventory Selection and Delivery, SB/SE Division, should:

Recommendation 7: Use the RPD to identify high-risk preparers with tax and penalty liabilities who identify themselves as being tax noncompliant during the PTIN renewal/application process.

Management's Response: The IRS disagreed with this recommendation. As stated in its response to Recommendation 1, the IRS cited resource issues for making program changes to systemically identify nonfiler preparers, which the IRS states would have limited scope and impact on tax administration. IRS management further noted that their existing routing and prioritization processes consider many case characteristics in directing liabilities for treatment, and preparers' tax delinquencies are subjected to that same process. IRS management also noted that they must ensure fairness in their case selection, and individual preparers should not be prioritized for assignment over other taxpayers who are similarly situated and who may also have tax compliance issues.

Office of Audit Comment: In the agreed upon Recommendation 2, the RPD will now be a resource for Examination function case building. Much like the identification of nonfilers, the IRS requests preparers to self-attest to tax noncompliance on the PTIN application and renewal process but does not use this information to help identify and bring tax return preparers into compliance. The IRS should use this information, which is already on hand to assist it in identifying and working tax noncompliant tax return preparer cases.

Recommendation 8: Ensure that high-priority preparer penalty and tax modules are assigned to the ACS or the Field Collection function to be worked and brought into compliance.

Management's Response: The IRS disagreed with this recommendation. The IRS concurred (as previously reported in this report) that the majority of preparer misconduct penalty and tax modules are in active collection status with the remaining modules in the Queue or CNC status. IRS management further stated that 97 percent of the preparer penalties in the Queue awaiting assignment carry a high-priority score. However, they added that current staffing levels do not permit the selection of all high-priority inventory, so some cases must remain in the Queue until such time as they can be addressed.

Office of Audit Comment: While preparer penalties in the Queue awaiting assignment may carry a high-priority score, we found that tax return preparers with penalties and self-attested balance due modules remain in the Queue on average from seven to nine months, respectively. In addition, the longer these cases remain in the



Tax Return Preparers With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized

Queue the more likely they are to be shelved. The IRS should consider these high-priority scored items during assignment of work in the Queue and ensure that preparer penalty and self-attested balance due modules are not significantly aged when assigned.

Recommendation 9: Consider using the RPD to determine whether preparers are filing large numbers of client returns showing potential unreported income prior to closing them as a CNC hardship and to monitor CNC hardship cases for potentially unreported income.

Management's Response: The IRS disagreed with this recommendation. The IRS stated that it does not have evidence that its current processes for making CNC determinations are insufficient, or that preparers who the IRS determines to be uncollectible may in fact be filing large numbers of client returns and earning undisclosed income. IRS employees conduct a financial analysis as part of the CNC determination and may still determine taxpayers who generate income to be CNC.

Office of Audit Comment: As previously noted in the report, our analysis found that preparers in CNC hardship status were potentially exceeding the CNC income threshold, based on our analysis of the numbers of client returns prepared. For this reason, we believe that when making CNC determinations the IRS should consider using RPD information and review the volume of returns filed for clients by preparers to assist with income identification that may not be reported by those preparers.

Recommendation 10: Ensure that the top 100 penalty modules in the Queue and top 100 modules for taxpayers who self-attested as noncompliant in the Queue are assigned to be worked by the Field Collection function, or where appropriate.

Management's Response: The IRS disagreed with this recommendation. As previously noted in the report, the IRS reiterated that the majority of preparer misconduct penalty and tax modules are already in active collection status. Furthermore, the IRS stated that it reviewed the 200 cases and determined that 146 are currently in the Queue. They identified 142 out of the 146 were designated as high priority. However, due to current staffing constraints, the IRS cannot select all high-priority inventory, and therefore, some cases remain in the Queue until such time they can be addressed.

Office of Audit Comment: While the IRS has designated 142 out of 146 cases as high priority, they remain in the Queue and are not being worked. Only four cases (less than 3 percent) have been assigned to be worked by IRS staff. While these noncompliant tax return preparer cases are sitting in the Queue, they continue to be noncompliant with outstanding tax obligations and may still be preparing returns for clients and receiving income that could be used to satisfy their tax obligations.



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

***The Servicewide Preparer Strategy Still Needs to Be Finalized With
Details to Prioritize Preparers' Noncompliance With Their Own Tax
Return Filings and Delinquent Liabilities***

In response to our prior report, the IRS developed a draft Servicewide Preparer Strategy to attempt to address improvement opportunities available to ensure a unified Servicewide preparer misconduct strategy.⁴⁷ The draft strategy identifies key gaps and options to address the gaps and mitigate risks. The key gaps identified, related to the IRS's compliance practices, were:

- Lack of centralization with the overall return preparer process and information.
- Lack of coordination among the business units in identifying, selecting, and treating return preparers.
- Lack of consistency with preparer penalty consideration/application between and within the business operating divisions.
- No common Servicewide goals or measures for return preparer activities.

However, the draft strategy does not provide specific direction on how the IRS might address preparers who are nonfilers or have balances due for their own individual and/or business tax accounts. The draft strategy did include some planned research that might address preparers with balances due. These include:

- Require the SB/SE Division Research office to determine whether preparer noncompliance affects misconduct.
- Implement a research project to determine the impact of preparer penalty assessments and/or collections on preparer compliance.
- Utilize research to conduct an analysis of penalty assessments to establish a hierarchy for the Queue based on complete preparer data.

From March through August 2019, the IRS team developing the strategy held five briefings with executives to discuss the draft strategy.

Although the draft strategy includes research to determine the impact of noncompliant preparers and to establish a hierarchy for the penalty assessments in the Queue, it does not include any specific items to address preparers who are nonfilers or those not compliant in paying their own tax liabilities. With the important role preparers play in maintaining the integrity of the U.S. tax system, the IRS must take seriously the issue of nonfiler preparers and address them.

⁴⁷ TIGTA, Ref. No. 2018-30-042, *The Internal Revenue Service Lacks a Coordinated Strategy to Address Unregulated Return Preparer Misconduct* p. 16 (July 25, 2018).



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Recommendation

Recommendation 11: The Deputy Commissioner for Services and Enforcement should ensure that the Servicewide Preparer Strategy includes researching preparer noncompliance to determine how to incorporate preparer nonfilers and those who are not compliant with paying their own tax and penalty liabilities.

Management's Response: The IRS agreed with this recommendation and will include one or more strategic goals that relate to researching and identifying preparer noncompliance.



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to evaluate the IRS's actions taken to ensure that tax return preparers are in compliance with their tax obligations. To accomplish our objective, we:

- I. Determined the Examination function's efforts to pursue return preparers who are nonfilers and the Collection function's efforts to pursue assessed penalties or taxes owed.
 - A. Obtained and reviewed the current draft of the IRS's Servicewide Preparer Strategy.
 - B. Interviewed Examination function staff to determine what steps are taken to identify preparers who are nonfilers and to make assessments, if appropriate.
 - C. Interviewed Collection function staff to determine the current state of Collection efforts to address the collection of return preparer penalties.
- II. Determined the effectiveness of the Collection function in pursuing return preparers who self-attest to being noncompliant and those who were assessed penalties.
 - A. Identified the population of return preparers from the RPD who self-attested to being tax noncompliant.
 1. Determined the outstanding balances due and the collection status.
 2. Determined the potential impact preparers with outstanding balances have on tax administration.
 - B. Identified the population of return preparers from the RPD who have been assessed return preparer penalties.
 1. Determined the outstanding balances due, the collection status, and the length of time the penalties had been outstanding.
 2. Determined the potential impact preparers with outstanding balances from penalties assessed had on tax administration.
- III. Determined the IRS's effectiveness in addressing preparers who are not in filing compliance with their own personal tax returns.
 - A. Interviewed SB/SE Division Examination function Headquarters personnel to determine how they address preparer filing noncompliance.
 - B. Identified the population of return preparers from the RPD who were identified as nonfilers in TY 2016 while the RPD showed that they prepared/filed tax returns for others during PYs 2015, 2016, and/or 2017.



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Data reliability methodology

During this review, we assessed the reliability of the return preparer population data we received from the IRS RPD by validating a judgmental sample of the data for the preparers who self-attested as being noncompliant, those who were assessed penalties, and those who were nonfilers. The validity tests supported that the data were sufficiently reliable and could be used to meet the objective of this audit.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the SB/SE Division Collection and Examination functions' policies, procedures, and practices. We evaluated these controls by reviewing appropriate internal procedures and guidelines.



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Appendix II

Major Contributors to This Report

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Phyllis Heald London, Director
Javier L. Fernandez, Audit Manager
Beverly K. Tamanaha, Audit Manager
Meaghan Tocco, Lead Auditor
Carrie Mares, Auditor



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Appendix III

Report Distribution List

Deputy Commissioner for Services and Enforcement
Director, Collection, Small Business/Self-Employed Division
Director, Collection Policy, Small Business/Self-Employed Division
Director, Headquarters Collection, Small Business/Self-Employed Division
Director, Headquarters Examination, Small Business/Self-Employed Division
Director, Return Preparer Office
Director, Enterprise Audit Management



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Appendix IV

Outcome Measure

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. This benefit will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Increased Revenue – Potential; \$45,643,862 (see page 5).

Methodology Used to Measure the Reported Benefit:

Our analysis of November 2018 RPD information identified 10,495 preparers who filed more than 2 million tax returns for clients in PY 2016, but did not file a corresponding TY 2016 personal tax return. We first removed 557 preparers from the population because they were being worked in the Examination or Collection functions as of August 2019. Using the number of tax returns reported for TY 2016 for each of the 9,938 preparer nonfilers, we multiplied the number of returns prepared by \$176 to determine the total income.¹ We used the more conservative single filing status and allowed one tax exemption of \$4,050 and the single standard deduction of \$6,300 for TY 2016 to arrive at the taxable income. We then computed the tax based on the following IRS TY 2016 schedule for single taxpayers.

¹ We used the National Society of Accountants 2017 estimates for preparation of non-itemized tax returns costing taxpayers an average of \$176 per return prepared. However, tax returns with itemized deductions can cost taxpayers an average of \$273 per return prepared.



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Figure 1: TY 2016 Tax Rates for Single Filers

2016 Tax Rates - Single		
If taxable income is over	But not over	The tax is
\$0	\$9,275	10% of the taxable amount
\$9,275	\$37,650	\$927.50 plus 15% of the excess over \$9,275
\$37,650	\$91,150	\$5,183.75 plus 25% of the excess over \$37,650
\$91,150	\$190,150	\$18,558.75 plus 28% of the excess over \$91,150
\$190,150	\$413,350	\$46,278.75 plus 33% of the excess over \$190,150
\$413,350	\$415,050	\$119,934.75 plus 35% of the excess over \$413,350
Over \$415,050	no limit	\$120,529.75 plus 39.6% of the excess over \$415,050

Source: IRS single filer tax table for TY 2016.

Based on our calculation, we estimate that a potential \$45,643,862 in taxes could be assessed if the IRS worked the 6,903 preparer nonfiler cases.² There were 3,035 preparers with no estimated tax due after our calculation.

Management's Response: The IRS disagreed with the outcome measure stating that it has a high degree of uncertainty because it is based on estimates of the tax due on unfiled returns and on estimates of what could be collected from those balances. Furthermore, this assumes all cases would be audited and would fall within the thresholds to pursue the cases.

² According to IRS management, high-volume preparers may be preparing simpler returns, so the average fee could be lower. In addition, the individual PTIN holder's situation is unknown. For example, the preparer could have other staff working for them that assist in preparing returns, could be self-employed with business expenses, or could be a wage earner. These situations would potentially lower their compensation. However, we did not calculate the potential self-employment tax for these preparers, which would potentially increase their estimated tax assessments.



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Office of Audit Comment: We believe that the methodology used to quantify the outcome was appropriate and provided a reasonable estimate of the forecasted \$45,643,862 potential tax impact.



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Appendix V

Glossary of Terms

Term	Definition
Audit Information Management System	A computer system used by the IRS Examination function to control returns, input assessments and adjustments to the Master File, and provide management reports. The Master File is the IRS database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.
Collection Statute Expiration Date	Each tax assessment has a Collection Statute Expiration Date. I.R.C. Section 6502 provides that the length of the period for collection after assessment of a tax liability is 10 calendar years. The Collection Statute Expiration Date ends the Government's right to pursue collection of a liability.
Currently Not Collectible	Tax accounts are reported as CNC when the taxpayer has no income or assets, which are, by law, typically subject to levy.
Fiscal Year	Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
Individual Master File	The IRS database that maintains transactions or records of individual tax accounts.
Installment Agreement	The IRS allows taxpayers who are unable to pay their tax debt immediately to make periodic payments over time.
Integrated Collection System	A system used by Field Collection function employees (revenue officers) to report taxpayer case time and activity.
Integrated Data Retrieval System	IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Term	Definition
Inventory Delivery System	A system for collection cases, which uses analytical scoring models and business rules to route cases to the ACS, the Queue, or direct to the Field Collection function for assignment.
Levy	A method the IRS uses to collect outstanding taxes from sources such as bank accounts and wages or a legal seizure of property to satisfy a tax debt.
Lien	An encumbrance on property or rights to property as security for outstanding taxes.
Notice of Federal Tax Lien	A notice filed with the appropriate local government office, protecting the Federal Government's interest in the taxpayer's assets by providing public notice of the amount of unpaid tax.
Notice of Intent to Levy	Must be issued at least 30 days prior to the date of the levy and then the taxpayer has 30 days to pay the amount that is owed before property can be levied. This notice must be given in person, left at the taxpayer's home or business, or sent to the taxpayer's last known address by certified or registered mail.
Preparer Tax Identification Number	A PTIN is required if the individual prepares or assists in preparing tax returns for compensation.
Processing Year	The year in which tax returns and other tax data are processed.
Tax Module	Refers to each tax return filed by the taxpayer for a specific period (year or quarter) during a calendar year for each type of tax.
Tax Year	The 12-month period for which tax is calculated. For most individual taxpayers, the tax year is synonymous with the calendar year.



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Appendix VI

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

May 20, 2020

MEMORANDUM FOR MICHAEL E. McKENNEY

DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:

Eric C. Hylton
Commissioner, Small Business/Self-Employed Division

Eric C. Hylton

Digitally signed by Eric C. Hylton
Date: 2020.05.20 15:24:36 -04'00'

SUBJECT:

Draft Audit Report – Tax Return Preparers with Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized (Audit #201830039)

Thank you for the opportunity to review and comment on the subject draft report. Return preparers play a critical role in our tax system. As the report states, paid tax return preparers prepare 60 percent of all tax returns filed. While most of these preparers make good faith efforts to comply with their own tax responsibilities, when they cannot manage their own tax affairs, or if they intentionally claim credits and deductions to which they are not entitled, they could undermine the tax administration system.

Our goal at the IRS is to address preparer noncompliance as quickly as possible and in the most efficient and effective manner. We employ a multi-faceted and multi-functional approach to bring return preparers into compliance with their filing and paying responsibilities. As a result of a 2018 TIGTA audit report examining the issue of unregulated return preparer misconduct, we are in the final stages of developing a return preparer strategy. The strategy will allow us to leverage our limited resources and coordinate a full range of educational, civil, and criminal enforcement actions across all IRS functions within the return preparer community.

Partly as a result of the subject audit, our Examination function has begun using the Return Preparer Database (RPD) to identify nonfiling preparers and has included a number of those audits in its FY 2020 workplan. Our Collection function assigns return preparer penalties a high priority in its prioritization process; 97% of the preparer penalties in the Collection queue awaiting assignment carry a high priority score. IRS revenue agents and revenue officers are also alert to improper behavior by preparers. The IRS makes visits to preparers before, during, and after filing season; conducts correspondence outreach; and, in cases of egregious or criminal conduct, initiates criminal investigations and injunctions. As noted in the report, the IRS's Criminal



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

2

Investigation (CI) division in cooperation with the Department of Justice has a dedicated preparer program that focuses investigations on unscrupulous taxpayers.

More broadly, SB/SE has worked since 2018 to expand our efforts to combat nonfiling, in general. From Fiscal Year (FY) 2018 to the present, we have increased the resources devoted to nonfiler programs every year. This is yielding results; dollars collected from secured delinquent returns increased by 33% (to \$1.89 billion) from FY 2018 to FY 2019. In recognition of the importance of nonfiler programs in promoting overall compliance, we established the Small Business/Self-Employed (SB/SE) Nonfiler Strategic Plan. The Plan sets out the current SB/SE strategic framework for addressing nonfilers and ensures coordination across SB/SE business units.

Our budget has generally suffered cuts since Fiscal Year 2010 with our full-time equivalents decreasing over 15 percent from FY 2013 to FY 2018. We also experienced a hiring freeze from FY 2011 to FY 2018 with very few hiring exceptions made during this time. During this decrease in both funding and personnel we faced increasing challenges, including implementation of new legislation such as the Foreign Account Tax Compliance Act (FATCA), Affordable Care Act (ACA), and Tax Cuts and Jobs Act (TCJA). It will take considerable time for us to restore our enforcement levels. Our funding and staffing limitations required us to make difficult decisions regarding priorities and the types of enforcement actions we pursued. We must balance these limited resources with priorities that include, but are not limited to, customer service and enforcement efforts. We must achieve balanced coverage across the various types of returns as well as geographic considerations. In FY 2020, we have a renewed focus on high-income taxpayers and combating fraud. To address this trend of declining resources, our FY 2021 budget request included funds for investments in expanding and improving the effectiveness and efficiency of our overall tax enforcement program.

The estimate of the increased revenue potential that would result from TIGTA's recommendations is based on estimates of the tax due on unfiled returns, and on estimates of what could be collected from those balances. These estimates carry a high degree of uncertainty. They also assume we would audit all cases, despite the fact that IRS would not generally pursue a case where the costs to establish the liability exceed what would be assessed and collected. Lastly, pursuing the cases suggested in this audit report comes with an opportunity cost of shifting staffing from other generally higher dollar work, which was not accounted for in the outcome measure.

Attached is a detailed response to your recommendations. If you have any questions, please contact me or Paul Mamo, Director, Collection Operations, Small Business/Self-Employed (SB/SE) Division.

Attachment



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

Attachment

RECOMMENDATION 1:

The Commissioner, SB/SE Division, should update the *IRS Small Business/Self-Employed Nonfiler Strategic Plan* to include identifying and prioritizing nonfiler preparers for examination.

CORRECTIVE ACTION:

We are currently unable to systemically identify preparers based on the RPD or the Preparer Tax Identification Number (PTIN) via Integrated Data Retrieval System (IDRS), which prevents us from picking up any such indicators for nonfiler selection purposes. To do so would require the IRS to expend resources for programming changes that would have limited scope and impact on tax administration.

However, this year Examination is using the RPD and PTINs to manually identify preparers who are nonfilers and is working a number of those cases. Examination plans to do this again next year. Also, the Service Wide Preparer Strategy will include recommendations regarding research and identification of preparer non-compliance (see Rec. 11).

IMPLEMENTATION DATE:

N/A

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 2:

The Commissioner, SB/SE Division, should update Internal Revenue Manual (IRM) 4.1.5 to include the RPD as a recognized internal source for Examination case building.

CORRECTIVE ACTION:

We will update IRM 4.1.5 to include the RPD as a recognized internal source for Examination case building.

IMPLEMENTATION DATE:

February 15, 2021

RESPONSIBLE OFFICIAL:

Director, Examination Case Selection, SB/SE



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

2

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 3:

The Commissioner, SB/SE Division, should Update IRM 4.11.51.7 to include guidance for Planning and Special Programs (PSP) return preparer coordinators to identify nonfiler preparers and provide them to Examination to review.

CORRECTIVE ACTION:

We will update IRM 4.11.51.7 to include guidance for PSP return preparer coordinators to refer preparer nonfilers for examination.

IMPLEMENTATION DATE:

January 15, 2021

RESPONSIBLE OFFICIAL:

Director, Examination Field and Campus Policy, SB/SE

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 4:

The Commissioner, SB/SE Division, should refer the top 100 preparers that we identified as high-risk nonfilers, as appropriate, to revenue officers in the Collection Field function, to revenue agents in the Examination function, or special agents within CI for enforcement action.

CORRECTIVE ACTIONS:

1. We provided to TIGTA the Fiscal Year 20/21 Field Exam Plan Assumptions which documented that nonfiler preparers were already included in the nonfiler workstream. As of March 2020, 37 of the 100 preparers identified by TIGTA were in the process of case-building for examination. The remaining cases identified by TIGTA did not meet our examination criteria, for example, because the preparer had filed a return, the preparer was already subject to another compliance action, or the case did not meet the materiality threshold.
2. Collection will refer the cases for which the taxpayer has not filed, and which are not in a substitute for return treatment stream or being worked by Exam or CI, to revenue officers in the Collection Field function.



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

3

IMPLEMENTATION DATES:

1. Implemented
2. November 15, 2020

RESPONSIBLE OFFICIALS:

1. Director, Examination Case Selection, SB/SE
2. Director, Field Collection Operations, SB/SE

CORRECTIVE ACTION MONITORING PLANS:

1. N/A
2. IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 5:

The Deputy Commissioner, Services and Enforcement, should consider a reallocation of resources to ensure that most, if not all, tax return preparer nonfilers are subject to enforcement action, such as creating a team of revenue officers, revenue agents, and special agents that specifically focus on nonfilers who present a high risk to tax administration.

CORRECTIVE ACTION:

In making resource allocation decisions we must balance preparer noncompliance with other competing priorities. Decisions as to the volume or types of preparer cases which will be put into the Collection and Examination work streams are work plan issues which are contingent upon resource constraints and organizational goals and priorities. Our resource allocation decisions cannot be viewed in isolation, but rather must be viewed as part of a balanced approach between the Service's balance due and nonfiler programs, and the various priorities within those programs. Working every noncompliant preparer case would mean that we would be unable to work other high priority cases such as taxpayers who are repeatedly failing to pay their employment taxes.

However, this year Examination is using the Return Preparer Database to identify nonfiling preparers using PTINs and is working a number of those cases. Examination plans to do this again next year. Also, the Service Wide Preparer Strategy will include recommendations regarding research and identification of preparer non-compliance (see Rec. 11). Field Collection conducted high-income delinquent filer revenue officer compliance sweeps (HiDeF ROCS) early in FY 2020 and planned to conduct additional ROCS. It also planned to conduct a national RO Compliance Sweep focused on the preparer population, before the coronavirus pandemic arose (this is now anticipated to occur in FY 2021).



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

4

IMPLEMENTATION DATE:

N/A

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 6:

The Deputy Commissioner, Services and Enforcement, should consider including executive level leadership from the Return Preparer Office and CI on the Nonfiler Executive Steering Committee.

CORRECTIVE ACTION:

The Nonfiler Executive Steering Committee will extend invitations to the Return Preparer Office and to Criminal Investigation.

IMPLEMENTATION DATE:

October 15, 2020

RESPONSIBLE OFFICIAL:

Director, Collection Inventory Delivery & Selection, SB/SE

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 7:

The Director, Collection Inventory Selection and Delivery, SB/SE Division, should use the RPD to identify high-risk preparers with tax and penalty liabilities who identify themselves as being tax noncompliant during the PTIN renewal/application process.

CORRECTIVE ACTION:

We are currently unable to systemically identify preparers based on RPD or PTIN via IDRS, which prevents us from picking up any such indicators for prioritization purposes. To do so would require the IRS to expend resources for programming changes that would have limited scope and impact on tax administration. Our existing routing and prioritization processes consider many case characteristics in directing liabilities for treatment, and preparers' tax delinquencies are subjected to that same process. Preparer penalty liabilities are already prioritized in the high-priority category and are



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

5

appropriately placed behind the higher dollar in-business employment tax inventory. Preparers' income tax liabilities, if large and recent enough, will also be placed in the high-priority category.

To ensure fairness in case selection, individual preparers, as a subset of all taxpayers who are involved in the tax industry, should not be prioritized for assignment over other taxpayers who are similarly situated. There are other taxpayers involved in the tax industry (such as those who represent taxpayers before the IRS, individuals who work for payroll preparation accounting services, unregulated preparers, and individuals working for large tax return preparation companies) who may also have tax compliance issues.

IMPLEMENTATION DATE:

N/A

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 8:

The Director, Collection Inventory Selection and Delivery, SB/SE Division, should ensure that high-priority preparer penalty and tax modules are assigned to the Automated Collection System (ACS) or Field Collection to be worked and brought into compliance.

CORRECTIVE ACTION:

As noted in the report, the majority of preparer misconduct penalty and tax modules are already in active collection status (ACS, Field Collection, installment agreement, and notice stream) with the remaining modules in the queue or currently not collectible (CNC) status. Many CNC cases have already been through Collection treatment and were deemed uncollectible. The report states that 17 percent were in the queue awaiting assignment. As noted in the IRS official management response memo, 97% of the preparer penalties in the Collection queue awaiting assignment carry a high priority score.

Unfortunately, current staffing levels do not permit the selection of all high-priority inventory, so some cases must remain in the queue until such time as they can be addressed.



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

6

IMPLEMENTATION DATE:

N/A

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 9:

The Director, Collection Inventory Selection and Delivery, SB/SE Division, should consider using the RPD to determine whether preparers are filing large numbers of client returns showing potential unreported income prior to closing them as a CNC hardship and to monitor CNC hardship cases for potentially unreported income.

CORRECTIVE ACTION:

We are not aware of any evidence that the IRS's current processes for making CNC determinations are insufficient, or that preparers who the IRS determines to be uncollectible may in fact be filing large numbers of client returns and earning undisclosed income.

Taxpayers who generate income may still be determined to be CNC. IRS employees conduct a financial analysis as part of the CNC determination, which may include a review of bank account records and other required asset and income verifications (see IRMs 5.15.1, *Financial Analysis Handbook*, and 5.16.1, *Currently Not Collectible*). Employees are trained to recognize discrepancies between the taxpayer's reported income and the taxpayer's lifestyle (which is a potential indicator of fraud) and to investigate this as appropriate. Hardship CNC cases systemically reactivate if it appears there is a change in the taxpayer's ability to pay indicating collectability.

IRM 5.16.1.3.5, *Preparer, Promoter, Appraiser, Material Advisor and Aiding & Abetting Penalties*, lists additional research revenue officers should consider prior to reporting preparer, promoter, appraiser, material advisor, and "aiding & abetting" penalties as uncollectible. These include reviewing the Return Preparer Penalty case file, contacting the Return Preparer Coordinator to obtain a client list, and being alert for concealed assets and an intentionally distorted financial picture. That IRM also recommends that certain promoter penalties be assigned to Abusive Tax Avoidance Transaction trained revenue officers.

IMPLEMENTATION DATE:

N/A



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

7

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 10:

The Director, Collection Inventory Selection and Delivery, SB/SE Division, should ensure the top 100 penalty modules in the Queue and top 100 modules for taxpayers who self-attested as noncompliant in the Queue are assigned to be worked by Field Collection, or where appropriate.

CORRECTIVE ACTION:

As noted in the report, the majority of preparer misconduct penalty and tax modules are already in active collection status (ACS, Field Collection, installment agreement, and notice stream) with the remaining modules in the queue or currently not collectible (CNC) status. Many CNC cases have already been through Collection treatment and were deemed uncollectible.

We reviewed the 200 cases and determined that 146 are currently in the queue. Of the 146, 142 are designated as high priority. Unfortunately, current staffing levels do not permit the selection of all high-priority inventory, so some cases must remain in the queue until such time as they can be addressed.

IMPLEMENTATION DATE:

N/A

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 11:

The Deputy Commissioner for Services and Enforcement should ensure that the Servicewide Preparer Strategy includes researching preparer noncompliance to determine how to incorporate preparer nonfilers and those who are not compliant with paying their own tax and penalty liabilities.



***Tax Return Preparers With Delinquent
Tax Returns, Tax Liabilities, and Preparer Penalties
Should Be More Effectively Prioritized***

8

CORRECTIVE ACTION:

The Service Wide Preparer Strategy will include one or more strategic goals that relate to researching and identifying preparer non-compliance.

IMPLEMENTATION DATE:

November 15, 2020

RESPONSIBLE OFFICIAL:

Director, Legislative Program Coordination, SB/SE

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.