NATIONAL TAXPAYERS UNION FOUNDATION

Issue Brief

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Congress and Administration Should Look Into Extending Tax Filing Deadline

Tax refunds have been a hot topic of late, with taxpayers wondering what the breathless news reports of shifting refund amounts mean for them. NTUF recently wrote an issue brief on this very issue, outlining some of the ways that tax refunds have been affected by the shutdown.

But the impact the shutdown has had on taxpayers goes beyond just some misleading tax refund statistics. The IRS was delayed out of the starting gate this tax season, and has spent the weeks following the shutdown trying to play catch-up. That's left taxpayers with less help in filing and making payment arrangements that they have come to expect, even weeks after the shutdown ended.

On top of this, the changes to deductions, rates, and exemptions from the Tax Cuts and Jobs Act (TCJA) mean that IRS assistance is more essential than ever. Taxpayers were already likely to be confused by all the changes — if anything, they needed more assistance than usual, not less.

Key Facts:

- **The government shutdown compounded an already-difficult filing season for the beleaguered Internal Revenue Service.**
- **The shutdown left taxpayers and tax practitioners without much of the support they need, as service centers were unstaffed and forms not yet completed.**
- **Congress, the Administration, and IRS should consider extending tax filing deadlines to protect taxpayers from the cost and disruption associated with the shutdown.**

Because of this, Congress, the administration, and the IRS itself cannot treat this filing season like any other. Already, the IRS has lowered the threshold for being penalized for underwithheld taxes from 90 percent of tax liability to 85 percent, but further legislative or administrative changes may be necessary to ensure that taxpayers are not left by the wayside.

Past IRS Issues

Shutdown or no shutdown, this tax season was always going to present significant challenges to the IRS. Its records of taxpayer accounts are stored on the oldest systems in the federal government, and generally the IRS muddles along with antiquated and unreliable technology. Just last year, the IRS was forced to delay the filing deadline by a day after its tech systems collapsed.

Moreover, the changes from the tax reform bill created a great deal of work for the IRS. Preparing for the first tax filing season following TCJA's changes meant publishing many new FAQs, tax instructions, notices, and regulations. These post-tax reform projects put a significant strain on an agency already known for its glacial pace and technological struggles.

Perhaps the most revealing indictment of IRS readiness even prior to the shutdown, however, comes from its fraud detection system. In July of 2018, months after last year's filing season ended, the IRS finally got to looking at refunds frozen by its fraud detection system. By the time that review was complete, the IRS found that it had a shocking 81 percent false positive rate — just 19 percent of the refunds frozen by the system were actually fraudulent! As a result, thousands of taxpayers rightfully owed significant refunds were forced to wait while the agency finally got around to releasing their money.

Taking an operationally challenged agency such as this and effectively forcing it to do four months of work in three months' time is a recipe for disaster. The results thus far have been exactly what one might expect, raising serious questions about whether or not Congress or the administration ought to act to extend the filing deadline.

The Effects of the Shutdown on the IRS

During the shutdown, 46,052 IRS employees, or 57.4 percent, were not furloughed. However, the clear emphasis for those employees remaining was on ensuring that revenue collection would proceed normally, and not on protecting taxpayer rights. Telephone service was limited during the shutdown, while in-person centers were closed. The Taxpayer Advocate Service, an independent entity charged with protecting taxpayer rights, was unable to conduct its work on behalf of taxpayers, and most of its appointments were cancelled.

Limited service was barely better than no service at all. At the start of filing season this year, the IRS answered 48 percent of incoming calls with an average wait time of 17 minutes. That's compared to 86 percent of calls and an average wait time of four minutes at the start of filing season last year.

The Taxpayer Advocate Service included a short report on the effect of the shutdown on IRS operations as an addendum to its annual report to Congress that illustrates the degree to which this affected the agency's operations. The charts below demonstrate the effect the shutdown had on taxpayers calling in to the IRS during the last week of the shutdown (week ending 1/26/19) and the first week following the end of the shutdown (week ending 2/2/19).

Percent of Taxpayers Receiving Help Was Down Significantly...

	Percent Receiving Help (Week Ending 1/26/19)	Percent Change from Corresponding Week in 2018	Percent Receiving Help (Week Ending 2/2/19)	Percent Change from Corresponding Week in 2018
Accounts Management Lines	36.80%	-56.30%	48.30%	-44.00%
Automated Collection System	30.90%	-57.50%	38.30%	-40.60%
Balance Due Lines	12.80%	-81.80%	6.70%	-88.40%

... And Average Speed of Answer Was Way Up

	Average Speed of Answer (minutes) (Week Ending 1/26/19)	Percent Change from Corresponding Week in 2018	Average Speed of Answer (minutes) (Week Ending 2/2/19)	Percent Change from Corresponding Week in 2018
Accounts Management Lines	31.9	593.50%	17	286.40%
Automated Collection System	51.9	355.30%	48.3	151.60%
Balance Due Lines	93	470.60%	80.6	167.80%

In each case, the average amount of time it took for a taxpayer to receive assistance at least doubled from the same time last year, and most increased by far more. Yet possibly the most striking statistic is that even a week after the shutdown ended, 93.3 percent of taxpayers attempting to make payment arrangements were unable to speak to a live assistor. Additional data will be released as filing season progresses, but the early returns suggest an agency that is unprepared to discharge its duties to assist taxpayers in understanding their legal obligations.

Focusing on keeping the revenue flowing while largely ignoring necessary support to taxpayers is a significant problem. As National Taxpayer Advocate Nina Olson stated:

> The IRS's authority to collect revenue is not unconditional. It is conditioned on statutory protections, and a lapse in appropriations does not eliminate those protections. It is unconscionable for the government to allow its employees to enforce collection of taxes without the concomitant taxpayer rights protections enacted by Congress. Chief among those protections is the Taxpayer Advocate Service, along with statutorily mandated releases of levies where a taxpayer is experiencing economic hardship and withdrawals of notices of federal tax liens which were premature or otherwise not in accordance with administrative procedures, or in the "best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States" or where it furthers the collection of tax or the taxpayer has entered into an installment agreement.

And the shutdown will likely continue to affect IRS operations. Even now, weeks after the end of the shutdown, the IRS is struggling to catch up. As of February 22, 2019, the IRS has processed 4.6 percent fewer returns than it had at the same time last year, and issued 4.8 percent fewer refunds.

The shutdown also had a significant impact on private sector tax preparation professionals. The private sector army that actually does much of the work of administering our tax system was not caught off guard by changes in the law. For example, Intuit was providing webinars and training on TCJA for professionals last year, even as their software was being massively retooled for 2019 filing season. And during the shutdown, firms like Intuit and H&R Block were accepting tax returns to be filed whenever the government reopened, or on January 28 when filing season began.

But the shutdown meant that the IRS wasn't providing assistance to many private tax preparers, leaving those with particular client matters in a difficult spot. The American Institute of Certified Public Accountants (AICPA) highlighted that power-of-attorney forms, which are necessary before a practitioner can act on behalf of a taxpayer, were not being processed, and many tax forms remained in draft form or in formats that are not able to be submitted electronically. These interruptions have made it more difficult for private firms to build effective software, which will likely contribute to delays in the normally smooth electronic filing experience.

How Should Uncle Sam Respond?

The temptation to keep revenue flowing while ignoring taxpayer support programs is significant, but the people paying government's bills deserve better. Congress and the IRS should give serious consideration to taking action to relieve burdens on taxpayers, including potentially extending the tax filing deadlines to give additional time to come into compliance. With less than six weeks remaining in the ordinary filing season, this is an urgent matter to address. Moving to enact an extension now can save a lot of headaches for taxpayers and tax practitioners.

Given that the shutdown lasted 35 days, consideration should be given to extending tax deadlines by at least one calendar month. That would push the individual filing deadline to May 15th, 2019, giving taxpayers some additional breathing room and giving the IRS extra time to complete an orderly processing of returns while providing necessary support to those in need. A comprehensive deadline extension would also extend other deadlines occurring in the first four months of the year, including but not limited to deadlines for submission of partnership returns (ordinarily March 15th) or for contributions to tax-advantaged retirement and health accounts (ordinarily April 15th).

Importantly, this should include extension of the deadline for responding to notices of levy issued by the IRS with expiration dates falling within the period of the shutdown. The standard 21-day reply period for such notices expired for over 18,000 levies during the shutdown, but the agency was unable to release any liens or levies at all, putting thousands of taxpayers in violation of the deadline through no fault of their own. Additionally, an extension should ensure that any interest accrued on cases pending in United States Tax Court is waived for the periods of delay in trial dates, opinions, or orders attributable to the shutdown, again with the aim of protecting taxpayers from costs incurred due to the shutdown alone. Consideration should also be given to providing a concomitant increase in the interest paid to taxpayers for delays in refunds owed to them, which currently is triggered only under very limited circumstances.

The cleanest and most comprehensive manner of achieving such an extension would be for Congress to act. A new statute would be the best method of protecting taxpayers because it could provide extensive and specific guidance to Treasury and IRS in these and other areas. It would also, for example, allow Congress to address related concerns, such as potential impacts on revenue, cash flow and debt issuance management, as well as any intersection with the looming debt ceiling deadline. Carefully-crafted legislation could ensure that making taxpayers whole does not adversely impact the balance sheet of the federal government.

While Congressional action is the only sure way to achieve a comprehensive deadline extension, the Secretary of the Treasury likely does have existing statutory authority to issue an extension. Section 6081 of the Internal Revenue Code Act says that the Secretary "may grant a reasonable extension of time for filing any return, declaration, statement, or other document" for up to six months. Additionally, the IRS likely has sufficient existing authority to waive penalties for late filing, or to further lower the threshold for "safe harbor" on underwithholding below 85 percent of tax liability. While each approach would help taxpayers in some fashion, none offer the kind of comprehensive protection that a new statute could provide.

While no Member of Congress has yet proposed a full extension of the tax filing deadline, Senator Ron Wyden wrote to IRS Commissioner Charles Rettig in early January to urge him to consider waiving penalties for taxpayers that under-withheld. His communication was backed up by a later release from the American Institute of Certified Public Accountants, which called on Treasury and the IRS to make a number of changes to protect taxpayers. AICPA suggested, among other things, that taxpayers should receive relief from underpayment penalties if their withholding amounted to at least 80 percent of tax due, and encouraged the IRS to establish an expedited process to grant such relief. It also urged the IRS to extend similar relief to businesses and non-profits as well.

While these suggestions are all good ones that should be pursued vigorously, they are unfortunately not equal to the task of fully protecting taxpayers from negative impacts associated with the shutdown. By its nature, the IRS making modest changes to underpayment penalties will only provide modest relief from the unique challenges of this filing season. A comprehensive legislative approach is the only method of ensuring complete protection for taxpayers, who were an innocent party in the shutdown dispute.

Conclusion

In short, there are many options available, but the important thing is that Congress and the IRS act to mitigate the squeeze they have placed on taxpayers that are left with less time and assistance to file their taxes the year after major tax reform legislation. The newly-passed TCJA was already poised to shake up tax filing, but the shutdown constituted an earthquake for an agency with an unstable foundation to begin with. By taking swift and decisive action, Congress and the IRS can help to ease the time crunch that threatens to harm taxpayers and further disrupt IRS operations.

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