March 20, 2020

Hon. Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Implementation of the Taxpayer First Act

Dear Commissioner Rettig:

Enclosed please find comments on the implementation of the Taxpayer First Act. These comments are submitted on behalf of the Section of Taxation and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

The Section of Taxation would be pleased to discuss these comments with you or your staff.

Sincerely,

Tom Callahan
Chair, Section of Taxation

Enclosure

cc: Hon. David Kautter, Assistant Secretary (Tax Policy), Department of the Treasury
Krishna P. Vallabhaneni, Tax Legislative Counsel, Department of the Treasury
Hon. Michael J. Desmond, Chief Counsel, Internal Revenue Service
Amalia C. Colbert, Taxpayer First Act Office, Internal Revenue Service
Lisa J. Beard, Taxpayer First Act Office, Internal Revenue Service
James P. Clifford, Taxpayer First Act Office, Internal Revenue Service
Rob Ragano, Taxpayer First Act Office, Internal Revenue Service
Preliminary Comments to the Taxpayer First Act Office

These comments (“Comments”) are submitted on behalf of the American Bar Association Section of Taxation (the “Section”) and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Tom Greenaway. Substantive contributions were made by Leslie Book, Diana Erbsen, T. Keith Fogg, Nina Olson, Lawrence A. Sannicandro, Eric Solomon, and Christine Speidel. The Comments were reviewed by John Colvin of the Committee on Government Submissions and Eric B. Sloan, Vice Chair for Government Relations for the Section.

Although members of the Section may have clients who might be affected by the federal tax principles addressed by these Comments, no member who has been engaged by a client (or who is a member of a firm or other organization that has been engaged by a client) to make a government submission with respect to, or otherwise to influence the development or outcome of one or more specific issues addressed by, these Comments has participated in the preparation of the portion (or portions) of these Comments addressing those issues. Additionally, while the Section’s diverse membership includes government officials, no such official was involved in any part of the drafting or review of these Comments.

Contact: Tom Greenaway
617-988-1221
tgreenaway@kpmg.com

Date: March 20, 2020
On July 1, 2019, the Taxpayer First Act (the “Act”) was signed into law.\(^1\) The Act amended the Internal Revenue Code (the “Code”), and it contains several non-codified statutory provisions that are intended to improve the operations of the Internal Revenue Service (the “Service”) and the administration of the internal revenue laws by strengthening taxpayer rights, enhancing customer service, advancing information technology, and restructuring the Service.\(^2\) The Service has solicited feedback from the public with respect to its implementation of the Act.

These Comments respond to a series of outreach sessions and requests made by the Taxpayer First Act Office (the “Office”) of the Service as part of the research and information gathering phase of the Office’s operations. We commend the Service’s commitment to “listen, learn, and then design” as a guiding principle, as articulated during the Office’s outreach sessions. We offer these preliminary comments at this time as we understand that the Office plans to start analyzing and developing its draft plans soon. We look forward to continuing to collaborate with the Service through the regular and transparent communications channels that the Office has already fostered.

As an initial matter, we emphasize the importance—for all stakeholders—of supporting Service employees throughout any reorganization. Our members appreciate the commitment of Service employees to government service. The Service and its employees have deftly handled the last few filing seasons, despite technological, budgetary, structural, and other challenges. Moreover, the current pandemic will certainly add further complexity to an already full agenda. Thus, we applaud the commitment of Service employees to serving the public in this environment of uncertainty and change.

Below, we begin by offering two broad themes that we hope are helpful to the Service as it develops its approach to implementing the modernization and customer service mandates set forth in the Act. We then offer more detailed preliminary suggestions for the Office to consider as it begins designing and drafting its plans.

**Two Broad Themes**

First, we recommend that enhancing customer service, across almost all Service employees and functions, be a key goal of the modernization and reorganization plans. Almost all Service employees and officials should be part of the customer service strategy,\(^3\) so almost all of them should be considered “customer service employees” under the Act.\(^4\) Properly implementing the Act, the Service’s strategic goals, and the

---

\(^3\) Internal Operations and Criminal Investigations employees, for instance, should not be considered customer service employees.
\(^4\) See Mortimer Caplin, Commissioner, A Personal Letter to Taxpayers, [https://www.irs.gov/pub/irs-prior/i1040--1962.pdf](https://www.irs.gov/pub/irs-prior/i1040--1962.pdf) (last accessed February 14, 2020) (“Regardless of the miracles of automation, our type of tax system cannot operate effectively without the human element. Courtesy and a fair and reasonable attitude—on the part of both tax administrator and taxpayer—are other essential ingredients if this system is to continue to serve the Nation well.”).
Integrated Modernization Business Plan require deep and broad commitment to customer service across the organization.

The Act directs the Service to propose a modernization plan that implements “the priorities specified by Congress in this Act.” In our view, nurturing and maintaining a Service-wide emphasis towards enhanced customer service is a clear Congressional priority. The Taxpayer Bill of Rights offers another set of Congressional priorities that should be considered policy drivers for the modernization plan.

It is also noteworthy to mention that although the Service’s enforcement program is highly effective, that program provides less than two percent of the revenue that the Service collects. The overwhelming majority of revenue that the Service collects comes in voluntarily. In our experience, voluntary compliance is enhanced by educating and helping taxpayers, and by formal and informal interaction between Service employees and taxpayers. Pro se taxpayers, however, almost always obtain resources from the Service only after an enforcement proceeding has already begun, and, unfortunately, those resources are typically deployed through automated processes, which can be disheartening.

Second, we recommend that the Service explicitly recognize its dual mission as service provider, which includes benefits administration, and revenue collector, which includes appropriate enforcement. Congress has increasingly called on the Service to administer social benefits programs, such as the earned income tax credit (the “EITC”). The Service’s role as a benefits administrator is now arguably almost as important as the agency’s traditional tax assessment and collection functions. Despite the growth in the EITC, other credits, and other tax benefits, the Service has yet to refresh its mission to include both revenue collection and benefits administration. The perceived primacy of the revenue collection function leads the Service to deploy an approach to administering refundable credits and other benefits that are (or appear to be) based primarily on an enforcement model.

We believe that, as the Service considers an overall comprehensive customer service strategy and organizational redesign, spelling out and committing to its dual roles will help the Service better serve all taxpayers, especially low and moderate-income taxpayers. In addition, we would expect that doing so would help the Service attract and retain employees whose skills, background, and aspirations are suited for the varied tasks the Service undertakes and also would assist the Service in aligning its systems, procedures, and internal performance measures with other agencies that serve similar roles. Finally, we note that by highlighting the Service’s benefits administration role, the Service also will be in a position to improve taxpayer and practitioner confidence in the tax system and help enhance taxpayer trust. Emphasizing service and noncoercive compliance, in addition to enforcement, will lead to improved voluntary compliance by

---

taxpayers and ensure that tax administration reflects the essential dignity and fundamental rights that all taxpayers should enjoy in their interactions with the Service.

**Preliminary Suggestions**

Set forth below are a number of preliminary suggestions for enhancing the taxpayer experience with the Service, gathered under three topics: “Seamless Taxpayer Interactions,” “Quickly Reaching the Correct Answer,” and “Connecting with Taxpayers.” Many of these suggestions are based on the experience of our members.

**Seamless Taxpayer Interactions**

- **Capture and Incorporate Taxpayer Feedback.** We commend the Office’s aspirational mission to “enable seamless taxpayer interactions.” Today, originating functions often lose track of their work once it leaves the function. In our view, there do not appear to be sustained and systemic efforts to analyze the ultimate results reached by functions that become involved later or to use that information to modify the processes followed and decisions made by the originating function. We recommend that the Service develop ways to capture, process, and learn from stakeholder feedback throughout all its systems and processes, like leading customer service organizations. We recommend that the Service study, adapt, and incorporate customer service key performance indicators used by other world-class organizations, such as taxpayer satisfaction results, response times, quality measurements, and employee engagement.

  We further recommend that the Service develop systems that provide feedback as quickly as possible to employees regarding the final resolution of their matters. In our view, allowing originating functions to learn about subsequent case development and resolution outcomes falls within the “need to know” limitations of the disclosure rules.\(^9\) Allowing employees to understand what happened to their cases from start to finish will allow better evaluation of their performance and provide employees with better chances to learn.

- **Better Integrate Appeals into the Feedback System.** We view a strong, Independent Office of Appeals (“Appeals”) as an integral part of the Service. In our view, one of the most important functions of the Independent Office of Appeals is to provide meaningful feedback to originating functions after Appeals completes its work on cases. We recommend that originating functions and the Service’s Office of Chief Counsel (“Counsel”) welcome and learn from feedback offered by the experienced employees in Appeals.

- **Improve the Appeals Feedback System and Expand its Use.** The Appeals function, through third-party contractors, regularly solicits feedback from representatives who interact with it. We fully support this effort, but current execution could be improved. Currently, contractors call taxpayers and practitioners with a rote list of questions that do not necessarily capture all the information needed to provide meaningful feedback.

\(^9\) See I.R.C. § 6103(h)(1).
Further, the timing of these calls is not sufficiently close in time to the interaction to result in the best feedback.

Rather than having feedback solicited by non-Service employees by telephone, we suggest that the Service as a whole—not just Appeals—solicit feedback from practitioners by email and receive that feedback through the website or other online portal (as discussed immediately below).

- **Develop a Web-Based Feedback System.** We recommend that the Service develop a web-based system of feedback. This system could allow representatives and taxpayers to go to an online portal and enter feedback immediately after an interaction with the Service, as almost all best-in-class organizations that focus on the customer experience currently do.

  This feature could be added to the e-services webpage and the identity of the practitioner confirmed. It may be necessary to give taxpayers and their representatives the opportunity to provide feedback anonymously to ensure feedback is candid. Nonfrivolous feedback could be aggregated and provided to employees and their managers in a timely fashion. Importantly, we believe it will be necessary to provide appropriate protections for Service employees from potentially negative repercussions from this feedback, particularly anonymously provided feedback.

- **Establish a Single Point of Contact for Each Affected Taxpayer.** We recommend that the Service design its systems—especially automated systems like Automated Collection Services and Correspondence Exam—to provide a single point of contact for each affected taxpayer. Represented taxpayers are more likely to be able to resolve matters with fewer contacts. Unrepresented taxpayers, however, are more likely to need multiple contacts with the Service in order to resolve (or try to resolve) their issues. Moreover, unrepresented taxpayers are less likely to have the necessary skills to navigate the system, and they must ordinarily deal with a different person each time they log on to the system regarding their case. This increases the likelihood of a failed experience with the system or a need to go higher in the system to reach Appeals or the Taxpayer Advocate Service (“TAS”) to obtain one point of contact.

  If, however, one Service employee were connected to the case at any point in time, this employee could monitor the case as it moves through the system, and he or she could provide one point of contact for the taxpayer. If the case were to go to Appeals or TAS, the point person may change, but the taxpayer would still have a single point of contact at any point in the process.

  In connection with call centers, we understand that Service employees are typically assigned “outgoing” or “incoming” call duty. In our experience, employees on “outgoing” call duty cannot receive incoming telephone calls, and employees on “incoming” call duty cannot make outgoing telephone calls. Furthermore, these employees do not know in advance whether they will be assigned to “incoming” or “outgoing” call duty. The limitation on employees to receive or make telephone calls on any given day—or even plan ahead—prevents the quick resolution of simple matters, such as providing supplemental information, and prolongs the tax resolution process for the Service and taxpayers alike. In this regard, we recommend that Service employees who work with automated systems be permitted (and encouraged)
to receive incoming calls and make outgoing calls for at least a portion of each work day.

- **Add “Where’s My Issue?” to the Service’s Website.** We recommend that the Service consider adding a “Where’s My Issue?” capability to the Service’s website to complement the popular and successful “Where’s My Refund?” and “Where’s My Amended Return?” programs. The Service might also consider adapting a dynamic version of the Taxpayer Roadmap, Publication 5341\(^{10}\) as part of that effort, where taxpayers can physically see where their case is on the map of the tax administration system.

**Quickly Reaching the Correct Answer**

- **Enhance Existing and Develop Additional Online Portals.** Taxpayers—from individuals to the largest corporations—need assistance at the front end of their engagement with the Service: accessible systems, accounts, information, forms, and other guidance. To further facilitate this, we strongly support the enhancement of existing portals and the development of additional online portals and other systems that would give taxpayers and their return preparers the timely ability to see, download, and combine information returns filed with the Service on their behalf.

- **Increase Taxpayer Education and Assistance.** We commend the Service for its efforts to connect unrepresented taxpayers with Low-Income Taxpayer Clinics (“LITC”) and pro bono legal services, and we support the continuation and expansion of these efforts.

  Preventing errors and compliance mistakes at the front end is more efficient than correcting those errors and mistakes on the back end, through enforcement. Despite the Service’s extensive outreach and education efforts, many taxpayers have difficulty understanding tax laws and procedures, and many cannot afford professional representation when problems arise. Taxpayer confusion and the related avoidance of the audit process can lead to unnecessary work through audit reconsideration and collection due process appeals. In addition, lack of adequate legal and tax advice on the front end for low-income taxpayers can lead to unnecessary petitions to the U.S. Tax Court.

  The Service has added LITC and TAS information to several important notices that taxpayers receive. Counsel has also supported efforts to connect self-represented taxpayers with pro bono resources through its participation in Pro Bono Days, by working with pro bono representatives in the Tax Court’s Calendar Call program, and by sending “stuffer” notices with LITC and pro bono information to self-represented taxpayers.

  Given the unmet needs, however, we believe there is a significant opportunity for improvement. Additional taxpayer education and assistance provided directly by the Service and in collaboration with the Section and other organizations has the potential

---
\(^{10}\) This map created by TAS, “illustrates, at a very high level, the stages of a taxpayer’s journey, from getting answers to tax law questions, all the way through audits, appeals, collection, and litigation.” See [https://www.irs.gov/pub/irs-pdf/p5341.pdf](https://www.irs.gov/pub/irs-pdf/p5341.pdf).
to increase voluntary compliance, reduce unnecessary appeals, and ensure that taxpayer rights are protected.

- **Increase Technical Training for Service Employees and Continue to Involve Practitioners.** Technical training is essential across all functions, from forms and systems design, to publications, to accounts management, through the compliance functions. We commend the Service for incorporating practitioners into its training programs, both at the local and national level, and we would welcome the opportunity to collaborate with the Service to help produce and deliver training materials to Service employees, practitioners, and taxpayers, including through virtual training platforms. We also support the Service’s publishing its internal training materials and recommend that all training materials be made public.

  We also recommend that the Taxpayer Bill of Rights and Revenue Procedure 64-22 be meaningfully incorporated into all Service training modules, including mandatory annual briefings. The most important rights in this regard include the right to representation, the right to finality, the right to be informed, and the right to pay no more than the correct amount of tax. We note and applaud the best practice of certain Service employees who, when they deliver Publication 1 to taxpayers, engage in a meaningful conversation with those taxpayers about roles and responsibilities.

- **Enhance Clarity of Service Communications.** As the Section has commented in the past, stability and simplification should be primary goals of the Service. And we commend the Service for its efforts to date. We encourage the Service to continue its efforts to enhance the clarity of its communications to help taxpayers understand what the next steps are in their interactions with the Service and what options are available to them at all stages of those interactions.

### Connecting with Taxpayers

- **Keep the Human Factor in Mind in Developing Plans.** We recommend that any plans take into account the preferences and capabilities of all taxpayers. While we understand the Service’s well-established institutional preference to shift taxpayer interactions to digital means of communication, millions of taxpayers are either unable or prefer not to engage with the Service digitally. We recommend that the Service maintain telephone, written correspondence, and in-person channels of communication through Taxpayer Assistance Centers (“TAC”) and other options, even though they are more expensive than digital options. We further recommend that all automated processes be designed and operated to include effective human “relief valves,” which will allow both taxpayers and the Service meaningful opportunities to better understand each other. We recommend that the Service include well-staffed, regional, in-person options as part of this effort.

- **Expand TAC.** We recommend that the Service expand the footprint of TAC to reach the maximum number of taxpayers and expand the scope of TAC to allow it to assist taxpayers to the fullest extent possible. Community-based TAC employees make

---

great ambassadors for the Service and provide assistance to individuals without computer skills who need a personal touch. We further recommend that TAC regularly hold office hours in the evening and on weekends so that individuals who work during the week can have access to TAC without having to take off time from work to meet with the Service.

- **Locate Appeals Officers in Every State.** Locating Appeals functions in Service Centers and campuses makes it difficult for Appeals officers to learn from taxpayers and practitioners face-to-face, to learn from Counsel attorneys who handle un-agreed cases, to observe the Tax Court, and gain other valuable experience that could assist in evaluating litigating hazards. While it may be efficient to house Appeals employees in Service Centers and campuses, doing so isolates them. We suggest that, consistent with the Congressional mandate, the Service locate Appeals officers in every state, in the communities of the taxpayers they serve—not only in the existing campus locations.

- **Consider Redefining The “Vulnerable Taxpayer.”** We recommend that the Service consider refining how it classifies “vulnerable taxpayers.” As part of this effort, the Service could carefully consider important differences in ways people access technology—for instance, mobile versus desktop.

We close by applauding the efforts of Service employees who work hard on behalf of the tax system. We reiterate our commitment to work with the Office and other stakeholders to help the Service develop better systems, approaches, and plans to enhance the taxpayer experience.

* * *

---

12 Pub. L. No. 105-206 § 2465(b).