
IRS EXPECTED TO AGGRESSIVELY TARGET NON-FILERS

The Treasury Inspector General for Tax Administration (TIGTA) recently released a report finding nearly 880,000 high-income non-filers cost the U.S. government more than \$45 billion in lost tax revenue over the years 2014-2016. Now, Congress is demanding answers and action and, in response, the IRS is expected to divert resources to aggressively pursue such noncompliance. A taxpayer who has failed to timely file past tax returns or pay past taxes should take steps now to correct past noncompliance.

RECENT TIGTA REPORT

TIGTA provides independent oversight of IRS activities and periodically audits the IRS's efficiency and effectiveness. In a recent report, TIGTA focused on the IRS's handling of high-income non-filers, defined as taxpayers earning over \$100,000 in income who do not timely file and pay the tax due under a required tax return.¹ TIGTA's recent report asserted serious lapses in the IRS's approach to high-income non-filers.

Specifically, the TIGTA report found the IRS had identified 879,415 high-income non-filers for tax years 2014-2016. Of the non-filers identified, 510,235 cases were sitting in the IRS Collection Department's inventory stream and, with the decline in resources, were not likely to be pursued. These non-filers have an estimated tax liability of \$24.9 billion. The remaining 369,180 non-filers had an estimated tax due of \$20.8 billion, and the majority of these cases hadn't been selected to be worked by the IRS at all.

The TIGTA report concluded that the "intentional nonfiling of tax returns by those with significant financial resources and sophistication is a brazen form of noncompliance" and further found that "the number of individual nonfilers has been increasing over the years." Nonetheless, TIGTA does not believe that it would be difficult to rectify the problem, even as the IRS is facing a smaller budget, because "pursuing non-filers is one of the IRS's most efficient enforcement strategies because issuing non-filer notices can be a cost-effective tool that requires little more than automated notices."

CONGRESSIONAL RESPONSE

Key members of Congress voiced their outrage that high-income non-filers could dodge a multi-billion dollar tax bill without punishment.

Senator Grassley, Chairman of the Senate Finance Committee, wrote to IRS Commissioner Rettig insisting that the IRS ensure its enforcement efforts are fair across all income levels and requesting a staff

¹ <https://www.treasury.gov/tigta/auditreports/2020reports/202030015fr.pdf>

briefing detailing the IRS's approach to increase compliance efforts in this area.² Senator Grassley seemed particularly exasperated by the cases that weren't being pursued at all by the IRS, as he specifically requested to understand "how the IRS was aware of so many instances of taxpayer noncompliance without ever having attempted to collect from such taxpayers, or even prepared substitute returns for them based on information received by the IRS"

Democrats on the Senate Finance Committee also sent a collective letter to Commissioner Rettig, noting that the TIGTA findings were an "affront to basic fairness."³ Among other information specifically requested from the Commissioner, the Committee asked what resources would be needed to complete the audits of the high-income non-filers for tax years 2014-2016 and what additional resources may be needed to continue such audits for tax years after 2016.

Reflecting bi-partisan dismay over the TIGTA report, Ways and Means Committee Chairman Neal sent his own letter to Treasury Secretary Mnuchin, asking for an approach to address these issues.⁴ Chairman Neal reiterated the large percentage of non-filing high-income taxpayers, and stated that the failure of the IRS to pursue such a large group of taxpayers raised "serious concerns with respect to the fairness of tax administration for all Americans." Chairman Neal called on Secretary Mnuchin to provide resource plans to address these issues so that the IRS can "pursue noncompliance fairly across every income level."

WHAT YOU CAN DO

There are a multitude of reasons why taxpayers may find themselves noncompliant with filing requirements, including accidental oversight or major life events consuming the taxpayer's daily life.

Even before the TIGTA report, the IRS announced early this year that revenue officers would be increasingly targeting high-income taxpayers with a history of noncompliance. Additionally, a separate TIGTA report, focusing on paid tax return preparers, recently recommended prioritizing the identification and examination of noncompliant tax return preparers, including those who have failed to file their own personal tax returns.

The TIGTA reports and the congressional response suggest that such taxpayers will be aggressively targeted in the coming months and years. Pursuant to Policy Statement 5-133, the IRS generally will not enforce delinquency procedures on non-filed tax years extending beyond the prior six tax years, even though the statute of limitations on tax years for which a tax return has never been filed remains open indefinitely.⁵ However, the Policy Statement does provide flexibility to enforce tax compliance beyond the typical six years with management approval based on several facts and

²[https://www.finance.senate.gov/imo/media/doc/2020-06-04%20CEG%20letter%20to%20IRS%20\(Rettig\)1.pdf](https://www.finance.senate.gov/imo/media/doc/2020-06-04%20CEG%20letter%20to%20IRS%20(Rettig)1.pdf)

³<https://www.finance.senate.gov/imo/media/doc/061720%20Finance%20Dem%20Letter%20to%20IRS%20on%20Filing%20to%20Audit%20High-Income%20Nonfilers.pdf>

⁴<https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/REN%20Letter%20to%20Treasury%20TIGTA%20Nonfilers%20.pdf>

⁵https://www.irs.gov/irm/part1/irm_01-002-001

considerations. Given the furor around the high-income non-filers tax dodge, it is possible the IRS could enforce compliance among high-income non-filers for all open tax years.

It is generally advantageous for taxpayers to take the first step towards compliance prior to being contacted by an IRS revenue officer. Accordingly, we urge such taxpayers to take action now by reaching out to the IRS to begin addressing any tax noncompliance issues.

In taking these proactive steps, we highly recommend that you consult with an attorney specializing in tax controversy in addition to your CPA. Tax controversy attorneys focus their practice on advocacy of taxpayers before the IRS and will be able to provide an objective assessment of your particular facts and suggest an approach to resolution that minimizes the hazards of any potential litigation. In addition, communications with attorneys are protected by a broad attorney-client privilege. While CPAs enjoy certain similar privileges, the privilege can at times be extended more broadly using a *Kovel* agreement, where the CPA is hired by the attorney and the two tax practitioners team together to represent the taxpayer.

There are many payment and other settlement options available to taxpayers seeking to restore their compliant filing status. Thompson & Knight attorneys have significant experience in assisting taxpayers facing these situations, and would be happy to consult with you to reach the best outcome.

If you have any questions about the information contained in this Client Alert, please contact the Thompson & Knight attorney with whom you regularly work or one of the attorneys listed below.

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