

**TAXPAYERRIGHTS.COM: IMPLEMENTING TECHNOLOGICAL SOLUTIONS TO BOLSTER
TAXPAYER ACCESS TO JUSTICE**

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I. The Challenges of Adopting an Omnichannel Approach to Taxpayer Service and the
Need for More Efficient Use of Technological Platforms

While recognizing the potential benefits of technology as a supplemental form of taxpayer service, the National Taxpayer Advocate (the “NTA”) has rightly expressed concern with the IRS’s reliance on technological solutions as a replacement for personal taxpayer service.¹ Specifically, the NTA has noted that a predominantly online-oriented approach to taxpayer service can have particularly negative effects on the 14 million individual taxpayers who do not have internet access and the over 41 million taxpayers who do not have broadband, as well on those who may technically have internet access but, either through preference or through a lack of technological literacy, would prefer having their tax questions answered either in person or over the phone.² For these taxpayers (many of whom are members of already economically vulnerable groups, such as the elderly and those living in isolated rural areas or in poverty), the IRS’s efforts to replace individualized service potentially violates the right to be informed in the taxpayer bill of rights.³

¹ National Taxpayer Advocate, *FY 2019 Objectives Report to Congress, Area of Focus #2, The IRS’s Failure to Create an Omnichannel Service Environment Restricts Taxpayers’ Ability to Get Assistance Using the Communication Channels That Best Meet Their Needs and Preferences* (Taxpayer Advocate Service) 41–46.

² *Id.* at 42. Exacerbating this problem even for taxpayers who have internet access and the requisite technological literacy required to interface with the IRS online systems is the fact that the IRS’s concerns over taxpayer privacy have resulted in an e-Authentication system that is so rigorous that it only produces a 30% verification rate, making it an ineffective tool for many taxpayers.

³ *Id.* at 41. Taxpayers have recognized the difficulties that they have in obtaining information from the IRS, as evidenced by the fact that the IRS inspires only 13 percent of its customers to utilize its expertise, ranking it last among federal agencies according to Forrester’s 2018 Federal Customer Experience Index. *Id.* at 45.

The NTA has called on the IRS to implement an omnichannel approach to service in which the IRS ensures that there are multiple communication channels that are available and that no one channel is preferred over another.⁴ While this recommendation is sound in that it certainly represents an ideal form of IRS taxpayer service, the IRS's very real resource challenges make it unlikely that it will truly implement an omnichannel approach in which all communication channels are treated equally. Rather, it is more likely that the IRS will continue to prioritize technological solutions to customer service if it believes that it can use such solutions to reduce its personnel costs.⁵ Indeed, in the most recent IRS Modernization Business Plan, the IRS states that providing a multi-channel service approach is one of its strategic goals but then outlines a roadmap of achieving that goal that is primarily focused on increased deployment of technological resources, with the goal of such technological deployment freeing up its limited personnel to handle more complex tasks.⁶

⁴ National Taxpayer Advocate, *supra* note 1, at 45–46 (noting that such an approach can produce “[a] favorable customer experience. . . [that] creates a sense of customer loyalty, which is crucial to a relational approach to taxpayer service and can increase voluntary compliance”).

⁵ National Taxpayer Advocate, *National Taxpayer Advocate 2017 Annual Report to Congress* (2017) 117–27. This increased use of technology to reduce personnel costs is already well under way, as evidenced by the following:

- the IRS has reduced the number of Taxpayer Assistance Centers, which has had the effect of causing 350,00 fewer taxpayers to be served by such centers in 2017 than in 2015;
- the IRS no longer prepares returns for taxpayers;
- the IRS will no longer answer tax law questions outside of filing season

National Taxpayer Advocate, *2017 Annual Report to Congress: MSP # 10* (Taxpayer Advocate Service 2017) 120, 123.

⁶ *IRS Integrated Modernization Business Plan* Apr. 2019. The bulk of this plan outlines the IRS's strategic goals in improving its deployment of technological resources across its modernization portfolio and pillars of: (1) the taxpayer experience; (2) core taxpayer services and enforcement; (3) modernized IRS operations; and (4) cybersecurity and data protection. *Id.* Implicit in this plan is the IRS's recognition that providing a multi-channel approach may be important but that, given its personnel and budget realities, such an approach will only be possible through increased and improved implantation of technological solutions. *Id.* at 16 (noting that “[u]pdated online services will provide streamlined service options to taxpayers who have simple, informational interactions, makin telephone and in-person taxpayer resource services more readily availablefor taxpayers wth more complex needs”). Specifically, the IRS states that it has a goal of 75 percent of its interactions with taxpayers having a digital alternative by 2024. *Id.* at 36.

Given this likelihood, a question arises regarding whether the IRS can effectively solve at least some of the NTA's concerns through a more effective use of technological platforms that bolsters, rather than restricts, taxpayer rights.⁷ This is particularly true in regards to vulnerable population groups because, while there are limitations to the types of legal issues that would benefit from increased technological deployment, these groups often have no alternative to a technological solution in obtaining access to justice, making increased use of technology a net positive for these taxpayers despite any potential drawbacks.⁸ In addition, while there are legitimate challenges to providing universal access to technological portals that can be used to access technological solutions, it is likely that much more widespread access may be possible through mobile phones and library access, thus mitigating some of the access issues that the NTA has identified.⁹

The IRS can accomplish the goal of deploying technology in a pro-taxpayer rights manner in three significant ways. First, the IRS can tailor its internal technological approaches

⁷ Indeed, such improvements are desperately needed given that the IRS' current technological solutions are woefully ineffective, as evidenced by the fact that the IRS ranks last among federal agencies for inspiring customers to use its expertise. National Taxpayer Advocate, *supra* note 1, at 45.

⁸ Frank Pasquale, *A Rule of Persons, Not Machines: The Limits of Legal Automation*, 87 GEO. WASH. L. REV. 1, 17 (2019) (noting that "on balance, substitutive legal automation in these fields [such as tax] may be a laudable phenomenon when the stakes of a matter are low, and when the chances of mobilization of better alternatives are also minimal").

⁹ Maximilian A. Bulinski & J.J. Prescott, *Online Case Resolution Systems: Enhancing Access, Fairness, Accuracy, and Efficiency*, 21 MICH. J. RACE & L. 205, 236–39 (2016) (noting that, while access challenges will continue to remain in some rural areas, "[n]evertheless, OCR systems are the future, and as we look forward to that future, access to the Internet will asymptotically approach full saturation."); Amy J. Schmitz, *Expanding Access to Remedies through E-Court Initiatives*, 67 BUFF. L. REV., 107 89 (2019) (noting the importance of technological solutions being mobile friendly, "which is important in light of data suggesting that those of lower economic means often rely on mobile devices as their only access to the Internet."). Note, however, that while mobile phones make significant inroads in reducing the technology gap that exists among different races, they can actually exacerbate the gap between different age groups. *Id.* at 156 (describing a 2013 Pew Research Center survey that showed similar levels of internet saturation among different racial groups after factoring in smartphones but that also showed a twelve percentage point increase in the technology gap between eighteen to twenty-nine year-olds and individuals over the age of sixty-five, after including smartphones). In addition, for legal issues that are too complex for online assistance to be conducted with smartphone or mobile technology, individuals who have access either to a home computer or a kiosk will still have an access advantage. *Id.* at 159.

to provide more information that taxpayers can consume more easily. Second, the IRC can develop technological platforms to facilitate online resolution of certain routine tax disputes. Finally, the IRS can develop partnerships with nonprofit actors designed to produce new innovative technological platforms that can enhance taxpayers' access to information and dispute resolution tools.

II. Improving Current IRS Technological Uses to Provide More Useful Information

Given the federal tax system's inherent complexity combined with many taxpayers' relatively low reading grade level,¹⁰ one of the most critical functions of the IRS's online approach is simply to get information out to taxpayers in a comprehensible format. While the IRS has made some strides in this regard and has thankfully incorporated this concept as a broad objective into its most recent technological strategic plan,¹¹ more work is still essential, particularly in regards to some of the most critical documents that bring taxpayers directly in contact with the IRS and that often are indicative of a controversy between a taxpayer and the IRS: IRS notices. Improved communication regarding the meaning of IRS notices is particularly important because, while IRS notice research continues to be one of the more popular online resources that taxpayers access, taxpayers nevertheless indicate that this is an area in which they generally prefer in-person help, which is becoming more and more difficult to obtain. That taxpayers seem to be initially interested in searching for help understanding tax notices online

¹⁰ Lois R. Lupica et al., *The Apps for Justice Project: Employing Design Thinking to Narrow the Access to Justice Gap*, 44 *FORDHAM URB. L. J.* 1363, 22 (2017) (noting that "[t] has been estimated that twenty percent of the U.S. adult population read below the fourth grade level, and less than half read above a tenth grade level"). This reading level is considerably below the reading level of the Internal Revenue Code, which is just below the twelfth grade level. Robert P. Strauss & Skye Toor, *The Readability of the US Federal Income Tax System: Some First Results*, NATIONAL TAX ASSOCIATION 107TH RESEARCH CONFERENCE 13 (2014).

¹¹ *IRS Integrated Modernization Business Plan*, *supra* note 6, at 17–20 (discussing the IRS's goal of using technology to modernize the taxpayer experience by enabling them to obtain information about simple requests online and to provide a mechanism to delivery IRS notices to taxpayers electronically).

only to determine that they need a person to answer their questions suggests that, while the IRS is correct to think that notice explanation is a good use of technological resources, such technological deployment requires more thoughtful execution to be effective.

Examining the current IRS system of explaining critical notices on its website reveals the weaknesses in the current approach that render it unfriendly to a large portion of taxpayers. The IRS has taken steps to allow taxpayers to obtain more information about a particular tax form through its Understanding Your IRS Notice or Letter site.¹² While this feature is helpful in that it provides concise explanations of a wide range of IRS notices and letters, it does not go far enough in highlighting the most critical aspects of particular forms in a manner that is easy to understand and that would be useful to taxpayers. The way the website explains two common and significant controversy forms, the statutory notice of deficiency and notices with collection due process rights, both of which contain critical information about how to preserve important taxpayer rights, illustrates this point.

One of the most critical notices that a taxpayer can receive in the controversy process is the Statutory Notice of Deficiency (“SNOD”), which serves as a “ticket to the tax court” provided that the taxpayer files a petition within 90 days (a non-waivable jurisdictional requirement).¹³ This document is incredibly important to low-income taxpayers because petitioning the Tax Court after receiving a SNOD is often the only realistic path to judicial

¹² This site can be accessed at: <https://www.irs.gov/individuals/understanding-your-irs-notice-or-letter>.

¹³ IRC §§ 6212 & 6213. There are numerous types of SNODs, but the most commonly issued SNODs are referred to as the 3219 SNODs, which include the CP 3219A, Automated Underreporter (for when a taxpayer’s return information does not match third party information that the IRS has received); LTR 3219 Correspondence Exam (issued after a correspondence exam when the taxpayer has not agreed with the IRS’s proposed changes); LTR 3219C Automated Questionable Credit (issued when refundable credits are being denied or when the taxpayer has false wages or withholding); and LTR 3219N, Automated Substitute for Return (issued to nonfiling taxpayers). National Taxpayer Advocate, *2018 Annual Report to Congress--Most Serious Problem #13* (Taxpayer Advocate Service 2018) 201.

review of an IRS determination because, unlike a refund suit, it does not require payment of the tax before judicial challenge.¹⁴ The National Taxpayer Advocate has rightly observed that, without even factoring in the steps that the IRS has taken to try to use technology to explain this notice, this notice on its face is designed in a manner that is likely to confuse taxpayers about their rights.¹⁵

Given the importance of the 90 day petition window and the inherent confusion in the design of the form itself, one would hope that this information would be highlighted in an easy to understand format on the IRS's explanation page for SNODs.¹⁶ The IRS' attempts to provide online assistance in understanding this critically important form, however, is a prime example of why the National Taxpayer Advocate is skeptical about the IRS' ability to replace in-person assistance with technological assistance. Searching for "3219" on the "Understanding Your IRS Notice or Letter" site produces results for only three types of SNODs: the LTR 3219b, the CP3219N, and the CP 3219A.¹⁷ Other forms of the notice are not referenced at all.¹⁸ While all three explanatory webpages begin with some bolded text designed to attract the reader's attention, only one of these webpages (the Understanding Your CP3219N Notice¹⁹) includes in this initial bolded language the fact that the taxpayer must petition the U.S. Tax Court within 90

¹⁴ *Id.* at 198 (noting also that "[t]he notice also provides due process, as part of procedural justice, to taxpayers, especially those who cannot afford representation").

¹⁵ *Id.* at 198–211. Indeed, in cases where the IRS uses summary assessment ("math error") authority to assess liability outside of the normal procedures regarding examination and statutory notices of deficiency, the notices that the taxpayer receives that indicate what (more restrictive) steps the taxpayer needs to take in order to request an abatement and receive a statutory notice of deficiency are even more confusing, resulting in taxpayers losing their ability to obtain pre-payment judicial review in tax court. National Taxpayer Advocate, *Earned Income Tax Credit: Making the EITC Work for Taxpayers and the Government-Improving Administration and Protecting Taxpayer Rights* 39–41 (Jun. 30, 2019) (providing specific examples of confusing language in math error notices).

¹⁶ This page is titled, "Understanding Your CP3219N Notice", and can be accessed at: <https://www.irs.gov/individuals/understanding-your-cp3219n-notice>.

¹⁷ Notices Search Results, available at <https://www.irs.gov/notices-index-search?search=3219>.

¹⁸ *Id.*

¹⁹ Understanding Your CP3219N Notice, available at <https://www.irs.gov/individuals/understanding-your-cp3219n-notice/>

days of the date of the notice in order to challenge the liability determination. For the other two SNOD explanation sites, this information, however, is placed innocuously approximately half-way down the page with little to no emphasis, where a taxpayer could easily overlook it if the taxpayer did not scroll down the page and not appreciate the notice's significance as the taxpayer's only "ticket to the tax court".²⁰

Another example in the collections process also illustrates the difficulties in the IRS's current efforts to disseminate notice information in an easy to digest format. When one accesses the page for "Understanding your LT11 Notice or Letter 1058,"²¹ which provides important collection due process rights, he or she is immediately informed that this letter indicates an intention to seize property, which is useful. However, buried in the middle of the page is an oblique reference to the collection due process rights that the taxpayer has in regards to this notice (rights that taxpayers do not have in regards to all notices) as well as a link to another page that provides information about collection due process rights. A taxpayer looking at this explanation would quite understandably not appreciate the significance of the LT11 notice and the significance of collection due process rights as well as what is required to request a collection due process hearing (including a critical 30-day time limit for making the request).²²

²⁰ See Understanding Your CP3219A Notice, available at <https://www.irs.gov/individuals/understanding-your-cp3219a-notice> and Understanding Your Letter 3219b, available at <https://www.irs.gov/individuals/understanding-your-letter-3219b>.

²¹ Available at <https://www.irs.gov/individuals/understanding-your-lt11-notice>.

²² IRC § 6330(a)(2); See generally Keith Fogg, *Trends and Tactics in Collection Due Process Litigation During 2018*, Procedurally Taxing (Dec. 28, 2018), <https://procedurallytaxing.com/trends-and-tactics-in-collection-due-process-litigation-during-2018/> for a discussion of the benefits of preserving collection due process hearing rights. A collection due process hearing can be particularly valuable for being able to contest violations of the taxpayer bill of rights in tax court. *Id.* While a taxpayer who does not request a collection due process period within the 30 day window can still request an "equivalency hearing" that provides a similar administrative forum to have collection due process reviewed, crucially this equivalency hearing does not come with a right to have the administrative decision reviewed by the Tax Court. See generally Charles R. Markham, *How Late Can a Taxpayer Request an Equivalent Hearing?*, Procedurally Taxing (Feb. 1, 2016), <https://procedurallytaxing.com/how-late-can-a-taxpayer-request-an-equivalent-hearing/> for a discussion of equivalency hearings.

These are just two examples, but they are indicative of why the IRS's efforts to use online platforms to replace in-person taxpayer service have been problematic, and particularly why taxpayers likely still prefer in-person interaction to explain the meaning of IRS notices after their initial attempts to find answers online.²³ These two types of notices are two of the most critical notices that taxpayers can receive, and failures to provide easy to access explanations of these notices (to say nothing of the inherently confusing nature of the notices themselves) raise legitimate questions whether technological platforms can be a meaningful substitute for in-person service. Satisfactorily addressing those concerns requires examining whether the problem is inherent to the technological platform itself or whether the problem can be solved with implementation changes.

Considering the potential effectiveness of some possible implementation changes indicates that the problem might indeed be one simply of execution. For example, any notices that contain critical deadlines could have that information as well as the information about how to respond to that deadline featured prominently in the informational page where it could not be overlooked easily. While the current website does helpfully link to pdfs of the actual form, this service could also be improved by annotating those pdfs to illustrate exactly where critical information can be found on the page as well as providing pdf examples of each version of a particular form that the IRS uses. These annotations would help these forms be less intimidating to taxpayers, particularly those in vulnerable groups who may lack in-person assistance and who

²³ National Taxpayer Advocate, *2017 Annual Report to Congress: Most Serious Problem #2* (Taxpayer Advocate Service 2017) 26 (noting that, while taxpayers start online to obtain a tax form, but, as they develop questions about the form, shift their preference to telephonic, in-person communication); National Taxpayer Advocate, *2017 Annual Report to Congress: MSP # 3* (Taxpayer Advocate Service 2017) 41–42 (noting that 76 percent of taxpayers prefer obtaining a form online, but only 42 percent prefer online assistance for obtaining additional information about an IRS form or letter).

might struggle to navigate the structure of an IRS notice.²⁴ Steps such as these simply involve thoughtful design choices and do not require any significant expenditure of resources. All they require is for the IRS to have upholding taxpayer rights as a priority that at least equals budget efficiency in determining how technology can best be utilized to improve taxpayer access to critical information. As will be discussed *infra*, there are other more ways in which the IRS can effectively use technology in a rights-affirming manner but that likely require a greater initial investment of IRS resources as well as innovative changes to the IRS controversy resolution process. Providing easy to understand explanations to taxpayers on its website is relatively low hanging fruit for the IRS to use technology in a way that conserves resources while enhancing taxpayer rights. Nevertheless, it is a critical first-step towards rights-affirming technological deployment because failing in this regard would make it much less likely that the possibilities discussed in the next parts of this article would succeed.

III. New Potential Frontiers for IRS Technological Deployment: Online Dispute Resolution

Moving away from the low-hanging fruit of improved information delivery through improvements in design implementation, there are additional and more provocative steps that the IRS could take to better deploy technology in its dealings with taxpayers. In addition to improving its online delivery of information, the IRS could make advances in improving

²⁴ National Taxpayer Advocate, *2018 Annual Report to Congress--Literature Review: Improving Notices Using Psychological, Cognitive, and Behavioral Science Insights* (Taxpayer Advocate Service 2018) 194–97 (discussing the need for the IRS to redesign notices to use plain language, simplification, improved organization and choice architecture, and nudging to make the notices more easily accessible to taxpayers); National Taxpayer Advocate, *NTA Blog: The IRS Should Redesign Its Notices Using Psychological, Cognitive, and Behavioral Science Insights to Protect Taxpayer Rights, Enhance Taxpayer Understanding, and Reduce Taxpayer Burden*, National Taxpayer Advocate Blog (Apr. 3, 2019), https://taxpayeradvocate.irs.gov/The_IRS_Should_Redesign_Its_Notices_Using_Psychological_Cognitive_and_Behavioral_Science_Insights_to_Protect_Taxpayer_Rights?category=Tax%20News.

taxpayer access to justice by investing more heavily in a reliable online dispute resolution (“ODR”) mechanism that included at least some automated algorithmic decision-making, at least for certain routine types of disputes.²⁵ ODR systems, properly executed in a manner designed to protect procedural due process²⁶, can reduce costs and improve access to justice by providing a dispute resolution mechanism to taxpayers in a format that does not negatively impact the time commitments of their other responsibilities.²⁷ These systems can also increase the comfort level of parties who might fear being the victim of stereotypes or biases in a face-to-face interaction.²⁸

This type of online dispute resolution mechanism would be inappropriate for more complicated forms of IRS disputes, particularly those in which the determination relied on difficult liability determinations or equitable considerations.²⁹ Nevertheless, it could be effective at streamlining the process of routine collections issues that rely on more mathematical determinations of collectability proved by routine document production.³⁰

²⁵ See generally Anjanette H. Raymond & Scott J. Shackelford, *Technology, Ethics, and Access to Justice: Should an Algorithm Be Deciding Your Case?*, 35 MICH. J. INT’L L. 485 (2014).

²⁶ The International Center for Online Dispute Resolution (“ICODR”) has articulated the following standards that serve as guiding principles for designing an ODR system that protects procedural due process: (1) accessibility; (2) accountability; (3) competency; (4) confidentiality; (5) equality of treatment; (6) fairness/impartiality/neutrality; (7) application of appropriate law; (7) security; and (8) transparency. Schmitz, *supra* note 9, at 142–43 (quoting the ICODR Standards, available at <http://icodr.org/index/php/standards/>).

²⁷ *Id.* at 95–96.

²⁸ *Id.* at 97; J.J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993, 2005–6 (2017) (describing the economic barriers vulnerable population groups can encounter in resolving legal disputes, which are “usually exacerbated by other structural hurdles associated with poverty status, including poor literacy, few educational opportunities, little political influence, stigmatization, and discrimination”).

²⁹ See Raymond & Shackelford, *supra* note 25, at 517 (noting that “despite what ODR enthusiasts may suggest, automation should not be used for every dispute”); Schmitz, *supra* note 9, at 159 (noting that “some cases may be too complex for resolution through a smartphone or mobile device”). In addition, certain types of online forms of communication may not be conducive in producing empathy, which can be an essential component of achieving a just outcome. *Id.* at 96–97 (noting, however, that the concerns about empathy might be mitigated by individuals developing greater skill in establishing connections with their audience in online communications).

³⁰ Raymond & Shackelford, *supra* note 25, at 517 (observing that “[u]pdating basic information, handling minor disputes and similar actions is probably within the realm of acceptability as is communicating through an online platform. . . of . . . highly regulated and important issues, is probably still a step too far for many individuals.”).

The IRS already has an online mechanism for installment agreements for liabilities of \$50,000 or less in which determinations can be made immediately after the online application is submitted.³¹ This approach could be extended to offers-in-compromise based on doubt as to collectability,³² decisions regarding currently-not-collectible status, first-time penalty abatement, and at least certain components of collection due process hearings.

What would be of particular benefit to low-income taxpayers would be if an online dispute resolution mechanism could be put in place to quickly handle frozen refund situations in regards to the Earned Income Tax Credit, which could result in taxpayers obtaining these refunds more quickly. Admittedly, however, these EITC disputes might not lend themselves to algorithmic decision making because, depending on which aspect of eligibility is being examined, the determination as to whether the taxpayer was entitled to the credit might depend on more qualitative analysis of the taxpayer's family situation for which there is little systematic data available.³³ In such a scenario, a modified form of online dispute resolution would be

³¹ The IRS has a page describing eligibility and serving as a gateway to the online application at: <https://www.irs.gov/payments/online-payment-agreement-application>.

³² At least for simple offers for low-income individuals, this would not require much more work than what the IRS has already set up with its offer-in-compromise pre-qualifier tool, available at https://irs.treasury.gov/oic_pre_qualifier/. That tool already allows taxpayers to enter financial information and have an offer amount suggested to them. The IRS could combine that interface with a system that allowed taxpayers to upload supporting documentation electronically and submit the offer and then have an online dispute resolution platform provide an immediate determination of whether the offer amount should be accepted or whether a new offer amount should be proposed. Such an enhancement could transform this tool from a useful guide to help people determine whether an offer-in-compromise is appropriate for them into a streamlined dispute resolution tool that could help reduce the substantial wait times that taxpayers experience in getting determinations on submitted offers. Jeffrey Gartzman, *How Long Does It [Sic] Take to Process An Offer In Compromise*, The Gartzman Law Firm, P.C. Blog (Mar. 12, 2019) (noting that “[p]rocessing times vary, but you can expect the IRS to take at least six months to decide whether to accept or reject your Offer in Compromise [OIC]. The process can take much longer if you have to dispute the examiner’s findings or appeal their decision.”).

³³ National Taxpayer Advocate, *Earned Income Tax Credit*, *supra* note 15, at 12–12 (noting how complexity surrounding the qualifying child rules combined with the lack of verifiable national data about whether the requirements have been satisfied make the EITC hard to administer). If there is less reliable data for an algorithm which would necessitate the application of more human judgment, a human decision maker would still need to be involved in determining the outcome of the controversy in order to counteract the “garbage in, garbage out” problem that can produce flawed results from algorithmic decisions based on faulty data sets. Schmitz, *supra* note

beneficial because it would make it easier for the IRS to still assign one individual employee to a particular taxpayer's audit by creating an online portal in which the taxpayer and the IRS employee could communicate in order to resolve the controversy more efficiently.³⁴ In addition, taxpayers could have the ability to make real time changes to their accounts to upload certain qualitative information about their family situation, which could create a more systematic data set that the IRS could use to approve EITC claims without having to freeze refunds in the first place.³⁵ The efficiency gains in administrability that such a system might achieve would not only benefit individual low-income taxpayers who might be able to receive critical refunds more quickly but would also enhance the viability of the EITC as a whole.³⁶

IV. Filling in the Gaps: Partnering with the Academic and Non-Profit Community

9, at 151–52 (noting that “AI cannot replicate essential human capabilities necessary for good governance and reasoned decision-making”).

³⁴ National Taxpayer Advocate, *Earned Income Tax Credit*, *supra* note 15, at 5 (noting that having a single IRS employee in charge of an individual's EITC audit is particularly important because of the sensitive family information that must be disclosed and the inherent confusion that can arise when a taxpayer needs to satisfy documentation requirements to prove eligibility under a complex statute); Schmitz, *supra* note 9, at 153 (arguing that “[r]ather than seek to replace humans with machines, humans should seek to use machines to improve their performance”).

³⁵ This could be particularly beneficial because much of the data that the IRS currently uses to flag EITC returns for examination is not overly reliable and is taken from sources that did not have tax collection as a purpose in collecting the data. National Taxpayer Advocate, *Earned Income Tax Credit*, *supra* note 15, at 38–39 (noting that “applying data collected for nontax purposes to tax claims is akin to relying on the addresses shown in a telephone directory to deny the home mortgage interest deduction”). Providing taxpayers an easy technological mechanism to keep their qualitative data current would have even more pronounced benefits in situations in which the IRS is attempting to correct mistakes with summary assessment (“math error”) authority, given that IRS errors in math error authority assessments can leave taxpayers fewer (and more confusing) rights to contest the liability in tax court prior to payment. *Id.* at 39. If such a system gave the IRS more reliable data, it would help the IRS limit its use of math error authority assessments “to taxpayers in cases that are not factually complex and where information can be accurately verified using reliable and accurate government or third-party databases,” situations in which math error authority is particularly useful. *Id.* at 43.

³⁶ National Taxpayer Advocate, *Earned Income Tax Credit*, *supra* note 15, at 7 (noting that “when the IRS is unable to verify or authenticate data relating to EITC eligibility, or the EITC's complexity means that taxpayers and preparers cannot understand how the law applies, it makes the EITC more vulnerable to opposition and increases pressure on the IRS to audit EITC claimants”).

Improving its own technology information delivery system and implementation of online dispute resolution would achieve important gains in the IRS's ability to serve a large number of taxpayers, but these steps would likely still leave gaps, particularly in vulnerable population groups. Despite increased access to and familiarity with technological platforms, there would still be some taxpayers who either did not have such access or who did not sufficient proficiency with technology or who simply might be uncomfortable with utilizing technology to resolve a legal dispute.³⁷

Partnerships between the IRS and non-profit organizations who can come up with innovative access to justice technological solutions can at least partially fill this gap. Similar partnerships with the for-profit sector can be problematic because of the focus on achieving a profit and because of the potential for rent-seeking by private partners, as seen with Intuit's efforts to prevent the government from pre-filing a tax return for most taxpayers.³⁸ Partnerships with the nonprofit sector, and the academic sector in particular, avoid these profit-oriented and rent-seeking problems and create opportunities for technological solutions focused on benefitting the public, even in regards to complex questions.³⁹ In addition, the academic sector is uniquely situated to create these platforms, because making them truly accessible to a large and diverse

³⁷ Schmitz, *supra* note 9, at 156 (noting that in any ODR deployment, "[t]elephonic and in-person meetings should, however, still be available; this is especially true for those who do not have access to or comfort with online processes"). See also notes 2 and 3 and surrounding text.

³⁸ Milan Markovic, *Justice Triage*, 29 STAN. L. & POL'Y REV. ONLINE 3, 12 (2017) (describing the rent-seeking behavior of Intuit in its efforts to maintain market dominance of TurboTax, and noting that "[a]mong other actions, it has endeavored to impose onerous regulations against tax preparer competitors. It has also sought to block Americans from filing their taxes by simply reviewing a pre-filled government filing."); Pasquale, *supra* note 8, at 9 (also describing Intuit's efforts to defeat government prepared returns).

³⁹ Elinor R. Jordan, *Point, Click, Green Card: Can Technology Close the Gap in Immigrant Access to Justice?*, 31 GEORGETOWN IMM. L. J. 287, 340 (2017) (noting that "[p]aradoxically, while businesses seek to enter this space are looking for very simple software paths that satisfy paying customers, pro bono services are freer to seek the right answer, even if that answer is multi-faceted, for those who cannot pay and may bring more complex issues to the table").

population often requires collaboration between numerous academic disciplines such as linguistics and psychology.⁴⁰ Through the low-income taxpayer clinic grant program, the IRS effectively already has a partnership with many academic institutions that could be leveraged by expanding the scope of grant funded⁴¹ activities to specifically include design and implementation of technological solutions to improve access to justice.⁴²

Examples of the legal academy taking steps to design technology platforms to improve the public's access to justice abound in other contexts but have so far left tax problems largely unaddressed.⁴³ Following the example of other academic initiatives to create access to justice platforms, the academic low-income taxpayer clinics could be enlisted to have students use a program like A2J Author to create guided interviews that could be used by the public to help diagnose a tax issue and to tackle various other tax justice projects.⁴⁴ Examples of these potential projects are: (1) automating the tax petition form; (2) suggesting potential resolution mechanisms

⁴⁰ Ray Brescia, *Using Technology to Improve Rural Access to Justice*, 17 NYSBA Gov. L. & Pol'y J. 58, 61 (2018) (describing the diverse array of skills necessary to develop effective technological access to justice solutions and recommending collaborations between attorneys and other disciplines such as "psychology, neuroscience, communications, linguistics," and computer science).

⁴¹ Brescia, *supra* note 40 (providing an overview of technological initiatives designed to improve access to justice in rural communities).

⁴² W. Edward Afield, *Social Justice and the Low-Income Taxpayer*, 64 VILL. L. REV. (2019) (describing the unique contributions that academic low-income taxpayer clinics can make by leveraging interdisciplinary expertise in their home academic institutions).

⁴³ Brescia, *supra* note 40 (describing efforts to use technology to improve access to justice in rural communities); Jordan, *supra* note 39 (discussing a variety of technological initiatives to improve immigration law services).

⁴⁴ See generally Ronald W. Staudt & Andrew P. Medeiros, *Access to Justice and Technology Clinics: A 4% Solution*, 88 CHI-KENT L. REV. 695 (2013). These platforms could be particularly useful in making IRS notices, the primary method through which taxpayers are informed of what their tax issue is, easier to understand and more accessible while the IRS undergoes the naturally time-consuming process of experimenting with different ways to redesign the notices themselves to make them more accessible. National Taxpayer Advocate, *NTA Blog*, *supra* note 24.

based on taxpayer inputs and referring taxpayers to the appropriate resolution form;⁴⁵ and (3) automating the completion of common collection forms such as the Form 433, 656, etc.⁴⁶

V. Benefits of Improved Technological Deployment

a. Increased efficiency in information delivery and case resolution

The most significant benefit to the technological described above are efficiency gains both in regards to how the public is able to receive information about their compliance obligations and in regards to the ability of the public to access the dispute resolution mechanisms available and have a tax dispute resolved in a timely manner. By reducing the amount of time that it takes to resolve a taxpayer's dispute, selective use of ODR can also result in a more efficient use of IRS personnel so that they can focus more on taxpayers that require face-to-face

⁴⁵ See e.g., Prescott, *supra* note 28 (describin online software form completion programs that are “capable of analyzing the answers litigants provid and can generate different prompt patterns based on a litigant’s specific responses”). Providing an easy mechanism for taxpayers to determine what the range procedural options are to resolve a dispute could be particularly useful given the fact that IRS notices typically do not communicate the full range of options available to a taxpayer to resolve a dispute. For example, IRS summary assessment notices denying the EITC to taxpayers who are under the two-year ban for claiming the EITC inform the taxpayer of the ability to request abatement of the subsequent denial but do not inform the taxpayer that the taxpayer could also attempt to have the ban removed through the audit reconsideration process. National Taxpayer Advocate, *Earned Income Tax Credit*, *supra* note 15, at 45–46.

⁴⁶ Ideally, these projects should be able to be sustained with limited personnel involvement outside of maintaining and updating the software platform in order to best realize efficiency benefits. Certainly, other potential uses of technology come to mind, such as using it to facilitate an interface between taxpayers and pro bono tax practitioners who can answer questions, similar to the ABA Pro Bono and Public Service Committee’s ABA Free Legal Answers program, modeled after a successful program instituted by the Tennessee Bar Association and the Tennessee Alliance for Legal Services, or the LawHelp Interactive program, which assists users in creating legal documents after participating in an online interview with a LawHelp representative. Schmitz, *supra* note 9, at 121–22; Prescott, *supra* note 28, at 2011–12. These uses certainly can be beneficial in bridging a geographic gap between users and individuals who can assist them, but they do not do much to reduce the need for personnel to provide assistance and thus do not have as many efficiency benefits as technological platforms that can reduce the need for personal assistance. Schmitz, *supra* note 9, at 67 (noting that technological platforms can be useful tools to encourage settlement even without predictive analysis but that AI and algorithms could extend these benefits to actually having the technological platform resolve cases by determining likely outcomes or actually reaching a resolution); Prescott, *supra* note 28, at 2009 (arguing that “narrowing the scope of reform efforts to those that focus exclusively on enhancing lawyer involvement risks blindness to nonlegal factors and may lead society to overlook technological solutions that can effectively reduce barriers to access in minor but systematically important cases”).

personal service. These efficiency benefits have access to justice benefits as well. Pro se taxpayers may be less likely to have their tax court case dismissed on jurisdictional grounds for failing to file a timely petition if they have better access to an online system that can assist them in understanding the statutory notice of deficiency and completing a timely tax court petition.⁴⁷

Because ODR is still in its infancy nationally in the United States, the best early data suggesting that it can have efficiency benefits and reduce case resolution times comes from the pilot programs that have sprung up in various states in the hopes of reducing case resolution times.⁴⁸ Of particular note is the ODR program in the Franklin County Municipal Court Dispute Resolution Department in Ohio to resolve city tax disputes.⁴⁹ In this program, taxpayers are able to use an ODR system free of charge to both upload pertinent files and to review and accept or decline settlement offers.⁵⁰ Initial data from the first two years of the program indicate that this ODR system caused cases to resolve more quickly and to be more likely to reach an agreed

⁴⁷ See Prescott, *supra* note 28 (examining state court programs and noting that “[i]n New Jersey, courts found that a pro se initiative giving pop-up instructions designed to help litigants complete required forms resulted in fewer cases being dismissed against pro se plaintiffs”).

⁴⁸ Schmitz, *supra* note 9, at 105–20 (describing a pilot ODR program in Michigan involving routine traffic citations that caused cases to be resolved in days rather than in months; a pilot program in Ohio allowing for online resolution of city tax disputes that significantly reduced case resolution times; a New York program to resolve traffic citations and to handle consumer debt issues online; projects in Texas designed to allow for online resolution of certain civil and small claims disputes; a pilot online small claims case resolution program in Utah; and fifty to sixty potential new projects in courts around the country to allow for ODR in family law, small claims cases, and landlord-tenant disputes); see also Prescott, *supra* note 28, at 2026–50 (providing a detailed empirical statistical analysis of the Michigan program’s effect on reducing case resolution times). The international community has also seen success in realizing efficiency gains through implementing ODR platforms: a pilot program in Quebec decreased case resolution times in litigation from an average of twelve months to an average of twenty-eight days; the Hangzhou Internet Court was able to resolve approximately two-thirds of 6,000 filed during its first year through its online platform; and the United Kingdom has begun a court reform project in which it is seeking to move more of the dispute resolution process online with the hopes of reducing the need for judges and allowing the court system “to reduce its staff by about 5,000 employees, and the number of cases heard in court by about 2.4 million per year.” Schmitz, *supra* note 9, at 131–37.

⁴⁹ Schmitz, *supra* note 9, at 109–14 (providing an overview of the Ohio ODR program for city tax disputes).

⁵⁰ *Id.* at 109.

resolution than cases that did not use the ODR system.⁵¹ The increase in settlements was particularly beneficial because expanding the availability of negotiated settlements and agreed judgments benefits both the taxpayer, which usually receives more favorable terms than default judgments, and the government because taxpayers are more likely to pay agreed amounts than default judgments.⁵²

b. Enhancing Taxpayer Rights

The benefits to thoughtful technological deployment are not limited simply to efficiency benefits. Efforts to improve the IRS's internal technology platform combined with innovation-enhancing partnerships with the academic community can serve as a critical bulwark for taxpayer rights.⁵³ Such additional support for taxpayer rights is particularly important in light of the fact that taxpayers do not have their own ability to assert the bulk of their rights through private rights of action and are generally forced to trust that the Commissioner will take appropriate steps to make sure that taxpayer rights are protected.⁵⁴

⁵¹ *Id.* at 112 (summarizing the resolution times for ODR and non-ODR cases over the same time periods in 2016 and 2017 and noted that ODR cases generally were resolved more quickly and were more likely to be settled rather than going to trial, thus conserving judicial resources).

⁵² *Id.* at 113.

⁵³ The taxpayer rights are codified in section 7803(a)(3) of the Internal Revenue Code and are:

- (A) the right to be informed,
- (B) the right to quality service,
- (C) the right to pay no more than the correct amount of tax,
- (D) the right to challenge the position of the Internal Revenue Service and be heard,
- (E) the right to appeal a decision of the Internal Revenue Service in an independent forum,
- (F) the right to finality,
- (G) the right to privacy,
- (H) the right to confidentiality,
- (I) the right to retain representation, and
- (J) the right to a fair and just tax system.

⁵⁴ See generally Leandra Lederman, *Is the Taxpayer Bill of Rights Enforceable?*, WORKING PAPER (2019) (arguing that there is no private right of action to enforce TBOR and that it is up to the Commissioner to ensure that taxpayer rights are protected).

Implemented properly, these efforts can improve the flow of information delivery, which enhances both the right to be informed and the right to quality service by freeing up limited IRS personnel to target their service more towards those who do not have technology access.⁵⁵ In addition, these efforts can enhance the right to pay no more than the correct amount of tax, the right to challenge the IRS, and the right to appeal an IRS decision if the IRS effectively is able to implement an online dispute resolution mechanism and if academic partners are able to effectively design applications that make it easier for taxpayers to understand their tax issue and to be directed to the appropriate resolution mechanism. These solutions could have significant access to justice benefits both for taxpayers who cannot afford representation and who do not have access to pro-bono representation and for taxpayers with low-dollar tax disputes that would not justify the financial cost of obtaining representation.⁵⁶

Apart from enhancing taxpayer rights specifically, improved technological deployment can also help promote human rights more broadly, given the connection between taxpayer rights and human rights that, while not obvious to scholars and policymakers at first blush, is nevertheless an inextricable one.⁵⁷ Tax policy intersects human rights in three fundamental

⁵⁵ In addition, these efforts can help connect tax justice to the recommendations of the American Bar Association Commission on the Future of Legal Services, which has recognized in a broader context the benefits that appropriate use of technological platforms can have on improving access to justice in vulnerable population groups. Commission on the Future of Legal Services, *Report on the Future of Legal Services in the United States* (American Bar Association 2016) 18–19.

⁵⁶ See IRS Publication 3319, *Low Income Taxpayer Clinics 2020 Grant Application Package and Guidelines*, at 2 (describing the geographic areas that do not have sufficient low-income taxpayer clinic coverage to effectively meet the needs of the taxpayers in those areas who need pro-bono assistance with tax controversies); Schmitz, *supra* note 9, at 156 (noting that tax disputes are particularly amenable to technological ODR solutions because “individuals may otherwise have no feasible avenue to contest [the issue] due to disproportionate costs of litigation”); Prescott, *supra* note 28, at 2003 (noting that “realistically, for minor, low-stakes cases, many litigants will have no choice but to attempt to address their legal issues without legal counsel”).

⁵⁷ Philip Alston & Nikki Reisch, *Introduction*, in *TAX, INEQUALITY, AND HUMAN RIGHTS* 1, 1–3 (2019) (arguing that while the conventional wisdom has not fully explored the connection between taxation and human rights, “there are important synergies to be had if the fields of human rights and tax are brought into sustained conversation with one another). This “sustained conversation” is critical, given that taxation is often the means by which the state advances human rights:

areas: (1) the state’s ability to have sufficient resources to fulfil its obligations in protecting human rights; (2) the ability of the state to reduce inequality through redistribution and economically incentivizing particular activities; and (3) the state’s ability to instill confidence in its citizens that it is being accountable to the public and upholding its democratic processes through its tax system.⁵⁸ Accordingly, an information delivery and controversy resolution system that bolsters taxpayer rights by improving access to justice and allowing taxpayers to comply with their tax obligations in a manner that is not overly burdensome does not just improve the tax system in a vacuum. Rather, it broadly enhances human rights by allowing the tax system to better function as it should in a fair and accountable manner that both raises revenue and serves as a vehicle for social welfare.

VI. Potential Drawbacks to Increased Technological Deployment

There are, of course, potential drawbacks to increased technological use, although these likely can be mitigated and do not outweigh the benefits described *supra*. The first potential drawback is that identified by the National Taxpayer Advocate in cautioning against an overreliance on technological solutions—namely, that increased technological use runs the risk

Tax policy, is, at base, a *social* tool. Thus, it cannot be divorced from principles regarding social priorities and entitlements, which are human rights. Indeed, human rights law is, at core, a framework to guide social policy and resource distribution. Human rights are principles for distribution within society—there have to be enough resources for a functioning judicial system, to achieve security for all, to realize a nondiscrimination agenda, and to ensure equal access to these mechanisms of law and government. Taxes are tools for effectuating that distribution and supplying the state with the funds needed to fulfill those purposes. What is needed is greater recognition that the fields of tax and human rights are inherently intertwined and face a common challenge today: the reconceptualization of what constitutes a just society and the social good.

Id. at 19.

⁵⁸ Nikki Reisch, *Taxation and Human Rights: Mapping the Landscape*, in *TAX, INEQUALITY, AND HUMAN RIGHTS* 33, 35–36 (2019).

of reducing critically needed personal service to taxpayers from the IRS.⁵⁹ Certainly, the National Taxpayer Advocate's concern cannot be dismissed and indeed is reflective of worthy goals to encourage the IRS to adopt an ideal form of taxpayer service. Given the IRS's budget realities, however, it seems inevitable that the IRS will be increasingly relying on technological solutions instead of personal service.⁶⁰ Thus, to a degree, this potential disadvantage to increased technological use becomes somewhat moot because the IRS simply does not have the resources necessary to implement a more ideal omnichannel approach. Thus, the most pertinent question becomes not whether the IRS should employ technology to make up for personnel shortfalls but how it should do so in order to minimize any reduction in personal service and to better utilize its personnel to be available to provide service in cases in which a technological solution would truly not be sufficient. The recommendations above attempt to address this question of "how" by focusing on steps that the IRS can take to realize its desired efficiency gains in a manner that meaningfully increases service to taxpayers; improves access to justice; frees up IRS personnel to address taxpayers for which a technological solution is in appropriate; and enhances, rather than curtail, taxpayer rights.

A second potential drawback to increased technological deployment, particularly in the context of technological interfaces designed to assist taxpayers in obtaining customized information or resolving a dispute online, is the risk that for-profit actors would seek to leverage the benefits of the technological efficiencies that resulted for the purpose of extracting profits from vulnerable taxpayers. Even if the IRS makes a concerted effort to coordinate solely with the nonprofit and academic communities to develop technological solutions, private actors will

⁵⁹ See notes 1-3 and surrounding text.

⁶⁰ Indeed, the IRS's goals described in the *IRS Integrated Modernization Business Plan* appear to bear this out. See note 6 and surrounding text.

inevitably seek to leverage the technological interfaces that result to develop products of their own.⁶¹ Should these interfaces become profitable, then private actors will inevitably seek to protect those profit-centers at the expense of vulnerable taxpayers just as Intuit has done with its successful lobbying efforts to limit the scope and reach of the government being able to provide an opportunity for taxpayers to file their tax returns electronically for free.⁶² These risks are real, but they should not be considered an insurmountable roadblock to the deployment of more efficient technological solutions. Rather, these risks need to be confronted head-on through a simultaneous increase and development of additional regulation of software providers and designers in order to ensure that they do not exploit vulnerable taxpayers through unjust rent seeking.⁶³ Indeed, the IRS Advisory Council, despite being critical of the ability of potential of return software providers in current free file program to exploit vulnerable taxpayers,⁶⁴ has indicated that more transparent and robust IRS oversight combined with changes to program participation requirements can allow for technological return preparation in a manner that still protects vulnerable taxpayer groups.⁶⁵

⁶¹ This already happens in the context of software providers who develop return preparation products taking steps to maximize their profits at the expense of taxpayers who would be eligible for lower-cost or free services. National Taxpayer Advocate, *Earned Income Tax Credit*, *supra* note 15, at 29 (describing the risks to taxpayers from software providers maximizing their profits at the expense of being transparent with their customers); Justin Elliott & Paul Kiel, *Inside TurboTax's 20-Year Fight to Steep Americans From Filing Their Taxes for Free*, PROPUBLICA, Oct. 17, 2019.

⁶² Elliott & Kiel, *supra* note 61.

⁶³ National Taxpayer Advocate, *Earned Income Tax Credit*, *supra* note 15, at 29 (recommending additional oversight over software providers in light of recent abuses of the Free File program).

⁶⁴ The IRS Advisory Council noted in its 2018 report that “[t]he IRS’s deficient oversight and performance standards for the Free File program put vulnerable taxpayers at risk, and make it difficult to ensure that FFA members are upholding their obligation to provide tax preparation and e-filing services ‘to economically disadvantaged and underserved populations at no cost to the individual or the government.’” IRS Publication 5316, Internal Revenue Service Advisory Council Public Report, November 2018, at 14 (quoting the Seventh Memorandum of Understanding on Service and Disputes between the Internal Revenue Service and Free File, Inc. (Mar. 6, 2015), Art. 2, at 5).

⁶⁵ The IRS Advisory Council recommended the following types of reforms to the Free File program, which are illustrative of the types of protections that need to be in place in any type of technological roll-out that could be captured by private actors:

Recommendations for the IRS

- Reevaluate and develop short- and long-term goals, objectives and performance metrics for the Free File program specifying what the IRS wants to accomplish through the program and the renewal of the MOU.
- Develop more robust processes for reviewing best practices of the FFA and its members to ensure fairness, objectivity and transparency. One way to achieve this goal is through an annual independent audit of each member of the FFA.
- Develop standards for frequently and actively checking on FFA member websites during the filing season, including most importantly logging in as a taxpayer and going through the filing process on each FFA member's Free File website.
- Increase communication on the IRS website to clarify when a taxpayer is leaving the IRS website and being sent to the landing page of FFA members' Free File website.
- Increase visibility on the IRS website for Free File options, including after April 15. The increased visibility should include reference not just to the Free File program and free fillable forms, but also to other free e-filing alternatives sponsored by the IRS, including the Volunteer Income Tax Assistance (VITA) program.
- Create additional questions on the IRS Free File landing page, "Software Lookup Tool," to more precisely ascertain taxpayers' eligibility for each FFA member's Free File offerings and to help avoid situations where taxpayers begin the tax filing process only to find out they do not qualify for the "free" filing.

Recommendation for the MOU

- Every year, provide all Free File users (including those who do not successfully complete a return) the option to complete customer satisfaction surveys pertaining to their experience using Free File.
- Share high-level statistical information between the IRS and each FFA member, particularly conversion rates, to assist in measuring taxpayer experience with the program as well as the overall success/failure of the program.
- Limit third-party advertising on FFA member Free File sites. Currently, some FFA members permit third-party vendors to advertise services on the FFA member's Free File website while taxpayers are going through the tax filing process. Such activity is confusing and potentially misleading depending on the content of the advertising.
- Explore the benefits of mandating that FFA members offer free state returns for all users, either with the FFA member or a free state e-filing alternative. Also explore the potential impacts such a mandate might have on member participation.
- Require that Free File users returning directly to FFA members' websites the following year (and not through the IRS website) can be directed easily to (and in fact can reasonably reach) FFA members' Free File websites.
- Develop metrics for increased oversight of the Free File program and for FFA members' compliance with the MOU.
- Expand the annual audit requirements of FFA members with a process that is objective and transparent, including a third-party audit of each member. The IRSAC understands that the FFA currently engages a private sector auditor to review FFA members' compliance with the terms and conditions of the program. However, the IRSAC also understands that this auditor's review and findings are not shared with the IRS, Congress or the public.
- Require the FFA to spend a certain percentage of its membership dues for advertising and promotion of the program.

Finally, there could also be a potential drawback in regards to taxpayer privacy, particularly when considering the utilization of an online dispute resolution platform. To the extent that such a system streamlined IRS processes to the point that the IRS had the ability to demand more documentation to establish certain taxpayer claims could result in problematic intrusions on taxpayer privacy.⁶⁶ Professor Michael Hatfield has observed that while those concerned with taxpayer privacy typically focus on it from the perspective of unauthorized disclosure of taxpayer information, there are equal or greater concerns about the information that the government is authorized to collect from taxpayers.⁶⁷ Historically, the only check on the IRS has been its practical difficulties in being able to collect information from a large number of taxpayers.⁶⁸ As Professor Hatfield states:

Yet, the ongoing information technology revolution will challenge both individuals and societies in unprecedented ways. As information technology revolutionizes tax administration in the coming decades, those benefits may include lower compliance burdens on individual taxpayers and lower administrative costs for the government. But, given how much personal information will be covered by the coming technology and how much personal information is potentially tax relevant, it is hard to have anything but a dystopian vision of this future—a vision in which individuals' inner lives are so burdened that the great achievements of our society shrivel.⁶⁹

These privacy concerns certainly require attention given the risk that the IRS might find it much more easy to request that taxpayers provide increasingly more detailed documentation about private aspects of their lives to the IRS in order to resolve a tax controversy if the documentation can be more easily processed and reviewed. On the other hand, online dispute

⁶⁶ Michael Hatfield, *Privacy in Taxation*, 44 FLA. ST. U. L. REV., 632 579 (2017).

⁶⁷ *Id.* at 63.

⁶⁸ *Id.* at 631.

⁶⁹ *Id.* at 632; See also *supra* note 8, at 9–10 (noting that the government can exploit increased technological convenience to its own advantage, as it did when it made the Code more complex in response to the convenience offered by TurboTax) (citing Lawrence Zelenak, Complex Tax Legislation in the TurboTax Eros, 1. Colum. J. Tax. L. 91, 91 [2010]).

resolution could potentially protect taxpayer privacy as well by reducing the number of IRS employees that need to review taxpayer information. For example, having only one IRS employee assigned to a matter could help lessen some of the privacy concerns inherent in the IRS's broad ability to request documents in an examination by limiting the IRS personnel who would need to access this data.⁷⁰

CONCLUSION

Given the IRS's commitment to continue to use technology to lower its personnel costs, however, at least some level of technology replacing in-person service seems here to stay, while a truly omnichannel approach to taxpayer service will remain elusive. The NTA and taxpayers more broadly are certainly correct to be concerned that the IRS may simply attempt to utilize technology as a budget-saving device by replacing core personal service functions with technological solutions that either create access to justice problems or make an already complex administrative system more unwieldy, particularly for vulnerable taxpayer populations. Indeed, much about how the IRS has thus far deployed technological solutions has confirmed this point, with technology's impact on taxpayer rights being very much an afterthought. This does not need to be the case, however. By taking relatively simple short-term steps to redesign current online information delivery systems and by considering more transformative long-term steps in regards to how technology can be used to resolve controversies more efficiently as well as enhance taxpayer access to justice, the IRS can in fact accomplish its goal while protecting and even enhancing taxpayer rights. Increasing the use of technology is simply employing an

⁷⁰ Hatfield, *supra* note 66 (discussing privacy concerns that can arise on account of the IRS's broad authority to request very personal information in order to allow certain exclusions, deductions, or credits).

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additional tool. Should the use of that tool hinder taxpayer rights, surely that is not the fault of the tool, but rather the one who wields it.