

April 2000

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Heather B. Conoboy

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Repository Citation

Heather B. Conoboy, *A Wrong Step in the Right Direction: The National Taxpayer Advocate and the 1998 IRS Restructuring and Reform Act*, 41 Wm. & Mary L. Rev. 1401 (2000), <https://scholarship.law.wm.edu/wmlr/vol41/iss4/5>

A WRONG STEP IN THE RIGHT DIRECTION: THE NATIONAL TAXPAYER ADVOCATE AND THE 1998 IRS RESTRUCTURING AND REFORM ACT

One of the most controversial areas in recent years has been the rights of taxpayers amid charges of abuse by the Internal Revenue Service (IRS).¹ Taxpayers have been plagued by everything from rude IRS employees to erroneous assessments.² The horror stories taxpayers have recounted before the House of Representatives and the Senate Finance Committee occupied much of the news for weeks and were televised nationally as Congress wrestled with ways to restructure an organization plagued by delay, inefficiency, and abuse.³

This problem is not novel.⁴ Stories of problems with the IRS have been around for decades.⁵ The trend toward reform began

1. See Loren D. Prescott, Jr., *Challenging the Adversarial Approach to Taxpayer Representation*, 30 LOY. L.A. L. REV. 693, 693 (1997) (discussing the concerns of taxpayers in dealing with the IRS).

2. See Internal Revenue Serv., *Taxpayer Advocate Releases Annual Report to Congress*, TAX NOTES TODAY 8-11, Jan. 13, 1999, available in WESTLAW, TNT Database [hereinafter *Annual Report*] (listing the top twenty most serious problems facing taxpayers in dealing with the IRS).

3. See, e.g., David Broder, *It Won't Be EZ: It's Time IRS Gets Down to Brass Tax*, DENV. POST, May 17, 1998, at I3, available in WESTLAW, DenvPost database; Albert B. Crenshaw, *IRS Overhaul Set for Passage; Measure Gives Taxpayers New Rights, Includes Capital Gains Break*, WASH. POST, June 25, 1998, at A1; Merrill Goozner, *Rich Investors Fill U.S. Coffers; Income Inequality Pays OFF in Taxes*, CHI. TRIB., Apr. 11, 1998, at 1, available in 1998 WL 2844698; *IRS Execs' Misdeeds Unpunished, Panel Told*, CLEV. PLAIN DEALER, Apr. 29, 1998, at 1A, available in 1998 WL 4132793; David Cay Johnston, *Behind I.R.S. Hearings, a G.O.P. Plan to End Tax Code*, N.Y. TIMES, May 4, 1998, at A16; David Cay Johnston, *3 Businessmen Testify of Armed Raids by I.R.S.*, N.Y. TIMES, Apr. 30, 1998, at A28.

For an overview of the most influential stories presented to Congress, see WILLIAM ROTH & WILLIAM H. NIXON, *THE POWER TO DESTROY* (Atlantic Monthly Press 1999).

4. See, e.g., Creighton R. Meland, Jr., Note, *Omnibus Taxpayers' Bill of Rights Act: Taxpayers' Remedy or Political Placebo?*, 86 MICH. L. REV. 1787, 1789 (1988) (discussing the taxpayer horror stories that led to the passage of the first Taxpayer Bill of Rights).

5. See *id.*

in the 1970s when the Problem Resolution Program (PRP) was established.⁶ Ten years later, the debate began anew.⁷

Three major bills passed in the last decade have attempted to address these problems. In 1988, Congress passed the first such bill, entitled the Omnibus Taxpayer Bill of Rights (TBOR).⁸ Among its other provisions, TBOR strengthened the authority of the taxpayer ombudsman, the precursor to the Taxpayer Advocate.⁹ In July 1996, President Clinton signed the second major bill, known as the Taxpayer Bill of Rights (TBOR2).¹⁰ TBOR2 improved a number of procedural rights of taxpayers in dealing with the IRS.¹¹ In addition, this bill established the national taxpayer advocate (NTA).¹² The final major bill, the 1998 IRS Restructuring and Reform Act (1998 Act),¹³ includes a new Taxpayer Bill of Rights (TBOR3)¹⁴ that strengthens the NTA and enables the advocate to bring about substantial reform within the IRS.¹⁵

Although the establishment of the NTA is an understandable step, the potential for the NTA to foment real change within the agency is limited. As currently established, the NTA is an unnecessary waste of valuable resources and faces a serious conflict between the goals of the office and the desires of the IRS. The main problems with the office are the procedural problem resolution provisions (taxpayer representation) and the substantive reform provisions requiring a report to Congress on the top ten litigation problems per category of taxpayer.

This Note examines these problems in four sections. The first section discusses the history of the NTA and the programs lead-

6. The PRP was established in 1976 as part of the Taxpayer Service Division and was spun off the following year as its own organization. See *Annual Report*, *supra* note 2, ¶ 23.

7. See Meland, *supra* note 4, at 1787.

8. Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, 102 Stat. 3342, 3730 (codified in scattered sections of 26 U.S.C.).

9. See *id.* § 7811, 102 Stat. at 3733 (allowing the ombudsman to issue taxpayer assistance orders).

10. Pub. L. No. 104-168, 110 Stat. 1452 (1996) (codified in scattered sections of 26 U.S.C.).

11. See, e.g., *id.* § 7524, 110 Stat. at 1471 (requiring that annual notice be given to delinquent taxpayers).

12. See *id.* § 101, 110 Stat. at 1453-54.

13. Pub. L. No. 105-206, 112 Stat. 685 (codified in scattered sections of 26 U.S.C.).

14. See *id.* § 3000, 112 Stat. at 726.

15. See *infra* notes 38-57 and accompanying text.

ing up to its creation, including the necessity for some form of taxpayer advocate and an independent reviewing authority for disputes between taxpayers and the IRS. The second section of this Note sets out the current provisions of the 1998 Act dealing with the establishment of the NTA, specifically those new provisions in the 1998 Act that strengthen the office. The third section analyzes the duties of the Taxpayer Advocate, the problems that Congress has yet to address, and advocates a different focus for dealing with taxpayer complaints from a more practical point of view. Finally, this Note concludes that the NTA should be viewed solely as an interim measure and should be charged primarily with the restructuring of the IRS and the retraining of its employees.

THE HISTORY OF THE NTA

In cases involving substantive interpretations of law, the place for a taxpayer to be is in the judicial system.¹⁶ In the case of procedural disputes, however, courts are not the proper place to work out the details.¹⁷ Because no method existed to resolve procedural disputes between the United States taxpayer and the IRS, short of full-blown litigation, many taxpayers were without recourse prior to 1976.¹⁸

In response to this concern, Congress established the PRP in 1976 to serve as a neutral body within the IRS to investigate problems and complaints, and mediate or recommend solutions.¹⁹

16. See Laurie Kratky Doré, *Secrecy by Consent: The Use and Limits of Confidentiality in the Pursuit of Settlement*, 74 NOTRE DAME L. REV. 283, 295 (1999) ("[C]ourts . . . exist in order to resolve the particular dispute before them according to substantive law").

17. See Marjorie E. Kornhauser, *When Bad Things Happen to Good Taxpayers: A Tale of Two Advocates*, TAX NOTES TODAY 45-58, Mar. 9, 1998, ¶ 6, available in WESTLAW, TNT Database (discussing the limited realm of possible areas in which a Taxpayer Advocate should be involved).

18. See Linda R. Martin, *Former IRS Official's Comments at Meeting of IRS Restructuring Commission*, TAX NOTES TODAY 6-19, Jan. 9, 1997, ¶ 3, available in WESTLAW, TNT Database.

19. See *Challenges Facing the National Taxpayer Advocate: Testimony Before the Subcomm. on Oversight of the House Comm. on Ways and Means*, 106th Cong. (1999), available in 1999 WL 8084570 [hereinafter *Challenges*] (statement of Cornelia M. Ashby, Associate Director, Tax Policy and Administration Issues); Kornhauser, *supra* note 17, ¶ 12.

The implementing guidelines of PRP instructed the district directors to set up Program Resolution Offices to be run by a Program Resolution Officer (PRO).²⁰ PROs lacked the authority to impose final solutions, but they could request that IRS actions be stopped to allow time to investigate the unresolved problems of the taxpayers and recommend possible ways to work out procedural details with the complaining taxpayer.²¹ In 1979, the national taxpayer ombudsman was established to head up the PRP.²² This official reported directly to the IRS Commissioner and was charged with providing greater authority and visibility to the PRP, both inside and outside of the IRS.²³ The ombudsman served as the primary advocate of taxpayers' rights and represented the taxpayers interests when the IRS was making decisions,²⁴ oversaw investigations by PROs, and administered the PRP's coordination with regular IRS collection officials.²⁵

Although the taxpayer ombudsman came from the upper echelons of IRS management,²⁶ the office was not considered to be sufficiently independent of the IRS.²⁷ In anticipation of the advent of the NTA, the IRS attempted to increase the powers and responsibilities of the taxpayer ombudsman, perhaps in an effort to avoid any further congressional intervention.²⁸ This effort, however, proved to be inadequate for Congress, because in 1996 Congress established the NTA, changing the focus of the office of the ombudsman from a neutral arbitrator to an advocate on behalf of the taxpayer.²⁹ The practical consequence of this new policy was that the NTA would represent taxpayer interests rather than the interests of the IRS.³⁰ Notwithstanding the sub-

20. See Kornhauser, *supra* note 17, ¶ 11.

21. See *id.* ¶ 16.

22. See *id.* (reviewing the origins and history of the PRP).

23. See *Annual Report*, *supra* note 2, ¶ 24.

24. See Martin, *supra* note 18, ¶ 14.

25. See *Annual Report*, *supra* note 2, ¶ 24.

26. See Martin, *supra* note 18, ¶ 14.

27. See Lee G. Knight & Ray A. Knight, *Dispute Resolution with the IRS and Taxpayer Bill of Rights 2*, 13 AKRON TAX J. 27, 71 (1997) (discussing the enactment of TBOR2 and the accompanying new procedural rights of taxpayers).

28. See *id.*

29. See *id.* Congress also recommended, but did not require, that PROs follow the direction of the new NTA. See *id.*

30. See *id.*

stantive change in direction, the advocate still primarily addressed procedural issues.³¹

As Congress continued the debate over additional taxpayer rights, the IRS again attempted to stave off further revisions to the NTA's office by strengthening the powers of the NTA.³² For the first time, the NTA could mandate certain administrative or procedural changes.³³ Congress, however, thought further reform was warranted and established the Office of the NTA in 1998.³⁴ The NTA heads the Office of the NTA and oversees the local offices of Taxpayer Advocates.³⁵

Under the 1998 Act, former PROs are known as service center taxpayer advocates and a regional taxpayer advocate will head each regional district.³⁶ The change in focus on the part of the NTA is consistent with the change on the part of the PROs. A separate career path is in the process of being established for those who wish to make a career in the IRS solely within the taxpayer advocate's office.³⁷

31. See Taxpayers Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996). There are two separate areas within the purview of the Office of the NTA. There is a procedural role of the taxpayer advocate that involves the responsibility of the Office to intervene in the IRS grievance process at the request of a taxpayer. This includes reviewing TAO applications, issuing TAOs, administrative remedies, and coordination of IRS resources. This was the original function of the PRP as established in the 1970s and is usually carried on at the district level with supervision from the national office. See *supra* notes 19-21 and accompanying text. The substantive role of the taxpayer advocate is the result of the more recent expansion of the powers and responsibilities of the NTA by the 1996 passage of TBOR2 and the 1998 TBOR3. It is carried on primarily by the national office and involves the monitoring of taxpayer disputes with the IRS and the subsequent studying of those problems with recommendations for change in the tax code or in IRS practice and procedure rules to help ameliorate the problems at the source. These monitoring activities and the recommendations are then reported to Congress. See *infra* notes 88-98 and accompanying text.

32. See *Taxpayer Advocate Gets Teeth*, 26 TAX'N FOR LAW. 321, 321 (1998) (summarizing the effects of IR-98-30, which allowed the NTA to order certain directives).

33. See *id.*

34. See Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 1102, 112 Stat. 685, 699.

35. See *id.* § 1102, 112 Stat. at 699-705.

36. See Lee R. Monks, *The Taxpayer Advocate and the Problem Resolution Program—The Impact of TBOR 2*, 28 TAX ADVISER 457, 458 (1997) (discussing the changes in both the selection and evaluation processes of regional and service center taxpayer advocates).

37. See Subcomm. on Oversight, U.S. House of Representatives *Unofficial Transcript of W&M Hearing on Taxpayer Advocate's Annual Report*, TAX NOTES TODAY

THE EFFECTS OF THE 1998 ACT ON THE OFFICE OF THE NTA

The 1998 Act strengthens the powers of the NTA's office³⁸ and addresses many of the concerns expressed about the office in the past.³⁹ The three main changes involve the appointment of the NTA,⁴⁰ increased reporting requirements,⁴¹ and better capabilities to protect the taxpayer.⁴²

Appointing the NTA

The statute provides specific eligibility requirements for NTAs. The NTA must have a background in customer service and have experience representing taxpayers.⁴³ In addition, he must not have been an IRS employee for at least two years prior to the appointment, and must agree not to work for the IRS for five years following the end of the term.⁴⁴ Although the IRS Commissioner and the oversight board must be consulted, it is the secretary of the treasury who appoints the NTA.⁴⁵

25-38, Feb. 6, 1998, ¶ 146, available in WESTLAW, TNT Database [hereinafter *W&M Hearings*] (statement of Congressman Portman).

38. See § 1102, 112 Stat. at 697.

39. See, e.g., 143 CONG. REC. S10,957 (daily ed. Oct. 22, 1997) (statement of Sen. Breaux) (arguing that the taxpayer advocate does not have enough independence, and proposing measures to give the taxpayer advocate a "much stronger hand in representing American taxpayers").

40. See Internal Revenue Service Restructuring and Reform Act, § 1102, 112 Stat. at 699.

41. See *id.* § 1102, 112 Stat. at 700.

42. See *id.* § 1102, 112 Stat. at 704.

43. See *id.* § 1102, 112 Stat. at 699.

44. See *id.*

45. See *id.* The first NTA to be appointed under TBOR3 was W. Val Oveson, former chair of the Utah State Tax Commission. Oveson, who has never worked for the IRS, was formerly Utah's Lieutenant Governor for two terms, the chair of the Utah Small Business Advisory Council, and a Certified Public Accountant who represented taxpayers before the IRS. See Amy Hamilton, *Rossotti Names New Taxpayer Advocate, Two Deputy Commissioners*, TAX NOTES TODAY 155-1, Aug. 12, 1998, available in WESTLAW, TNT Database (discussing the high praise Oveson's appointment has garnered from tax practitioners).

Provisions on Reporting

By June 30 of each year, the NTA must present a report on the objectives of the Office for the next year to the Committee on Ways and Means for the House of Representatives and to the Committee on Finance for the Senate.⁴⁶ By December 31 of each year, the NTA must report on the activities of the Office for the previous year to the Committee on Ways and Means for the House of Representatives and to the Committee on Finance for the Senate.⁴⁷ This report must include (1) an identification of the initiatives taken on improving taxpayer services, (2) recommendations received from individuals with the authority to issue taxpayer assistance orders (TAOs), (3) a summary of the twenty problems encountered most by taxpayers, (4) actions that have been taken under these sections and the results, as well as those items on which no action has been taken, (5) an identification of those TAOs that the IRS did not honor, (6) recommendations for administrative and legislative action to resolve problems, (7) an identification of those areas of the tax law that impose significant compliance burdens on taxpayers or the IRS and recommendations for remedies, and (8) the ten most litigated issues between taxpayers and the IRS as well as recommendations for remedying those disputes.⁴⁸

Provisions Aimed at Taxpayer Relief

In addition to more substantial reporting requirements, the Taxpayer Advocate may now issue TAOs⁴⁹ to provide relief for beleaguered taxpayers.⁵⁰ Only the NTA, the Deputy Commissioner

46. See Internal Revenue Service Restructuring and Reform Act, § 1102, 112 Stat. at 699-700.

47. See *id.* § 1102, 112 Stat. at 700.

48. See *id.*

49. See *id.* § 1102, 112 Stat. at 703-04.

50. See Arthur J. Breault et al., *Presidents Budget Proposal Affects Taxpayer Rights*, 60 TAX'N FOR ACCT. 170 (1998) (discussing President Clinton's 1999 budget proposal expanding the definition of significant hardship to include the following: unreasonable delay in resolving taxpayer problems, the immediate threat of substantial adverse action, the likelihood of irreparable harm or the taxpayer running up substantial legal or professional fees without relief, and the possibility of long-term adverse harm to the taxpayer).

of the IRS, or the IRS Commissioner may rescind a TAO.⁵¹ Current law allows the Taxpayer Advocate to issue a TAO in order to stop, delay, or suspend IRS actions.⁵² TAOs may be issued only when a taxpayer suffers or is about to suffer a significant hardship⁵³ as a result of an IRS action or omission.⁵⁴ The authority to issue TAOs has been delegated to regional and service center directors, regional and service center taxpayer advocates, regional commissioners, and the assistant directors.⁵⁵

Lawmakers have embraced this provision. Since the Senate Finance Committee's hearings on the abuses of taxpayers by the IRS, lawmakers have referred a large number of cases to the NTA's office.⁵⁶ Specifically, in less than a year, individual members of Congress have referred over two thousand cases to the NTA.⁵⁷ Despite this endorsement, a number of the duties awaiting the NTA raise concerns that need to be addressed. Without quick action by lawmakers, the IRS, and the new NTA, this new position that carries with it so many expectations may lose any hope of promulgating real change in the culture of the IRS.

51. See 26 U.S.C. § 7811(c) (1994), amended by Pub. L. No. 104-168, § 102(c), 110 Stat. 1462 (1996).

52. See Pub. L. No. 104-168, § 101(3)(a), 110 Stat. 1462.

53. A significant hardship is defined as "a serious privation caused or about to be caused to the taxpayer as a result of the particular manner in which the revenue laws are being administered by the Internal Revenue Service." 26 C.F.R. § 301.7811-1 (1999).

54. See 26 U.S.C. § 7811(a) (1994). It should be noted that a finding of significant hardship does not mean that a taxpayer will be granted relief. See 26 C.F.R. § 301.7811-1 (1999).

55. See Internal Revenue Bulletin, *Delegation of Authority for Taxpayer Assistance Orders*, TAX NOTES TODAY 247-9, Dec. 11, 1989, available in WESTLAW, TNT Database. The IRS may appeal a TAO through the chain of authority within the NTA's office, and finally to the IRS deputy commissioner of operations and the IRS Commissioner. See *Top IRS Officials Debate Scope of Taxpayer Advocate's Authority*, TAX NOTES TODAY 241-1, Dec. 15, 1999, available in Westlaw TNT Database [hereinafter *Top IRS Officials*].

56. See Herman P. Ayayo, *Finance Committee Refers Thousands of Cases to Taxpayer Advocate's Office*, TAX NOTES TODAY 112-7, June 11, 1998, available in WESTLAW, TNT Database (discussing the NTA's efforts to deal with the overload of cases).

57. See *id.*

THE FUNDAMENTAL FLAWS IN THE
CURRENT POSITION OF THE NTA

The issues plaguing the NTA are both substantive and procedural. The substantive problem stems from the reform responsibilities charged to the NTA. The procedural problems are a result of an attempt to mix the goals of taxpayer rights with the traditional duties of the taxpayer advocate, resulting in serious conflicts between the taxpayer representation component and the need for IRS reform. To understand both the substantive reform problems and the procedural resolution problems, first it is necessary to examine the fundamental formulation that most critics have identified as the underlying requirement for success of the NTA.

The Independence Principle as the Bedrock for Success

Traditionally, the independence principle referred to the extent to which a person is subject to another's will.⁵⁸ This means that employee status is irrespective of impartiality.⁵⁹ Some people may have a particularly strong will or presence and are naturally independent, while others may be swayed more easily.⁶⁰ The Office of the NTA is supposed to be independent from the examination, collection, and appeals operations of the IRS.⁶¹ In this capacity, the independence principle will serve to ensure that the taxpayer advocate will not be influenced by those branches of the IRS perceived as less taxpayer-friendly. When discussing the independence of the NTA, however, it is to be remembered that this person is a government employee. By having the annual reports of the NTA go to Congress without IRS review, the independence principle seems to be upheld.⁶² The taxpayer advocate, however, reports on his own employer,

58. See Kornhauser, *supra* note 17, ¶¶ 28-32, 56 (discussing the different types of independence expected of a taxpayer advocate).

59. See *id.* ¶ 57.

60. See *id.* ¶¶ 56-57.

61. See *Challenges*, *supra* note 19.

62. See Internal Revenue Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 1102, 112 Stat. 699-700.

and therefore, his report is not sufficiently isolated from bias or self-interest. Congress attempted to address this problem by requiring that the NTA not be recruited directly from the ranks of IRS employees.⁶³ This proposed solution does not add to the independence of the NTA and may hinder his ability to represent effectively the interests of the taxpayer. An NTA who lacks knowledge of IRS procedures and practices would encounter serious problems in attempting to cut through bureaucratic obstructions and fix a problem or make recommendations for meaningful improvement.⁶⁴

It has been suggested that an advocate or ombudsman who operates outside the IRS would provide a better, more independent, perspective.⁶⁵ The 1998 Act addresses this viewpoint in part by providing for the appointment of the NTA by the secretary of the treasury as opposed to the IRS Commissioner.⁶⁶ Indeed, the Tax Executives Institute addressed this argument, agreeing that although taxpayer advocates need to be impartial and "exercise independent judgment, . . . they also need to know how to cut through the procedures and protocols that might otherwise hinder their ability to resolve particular problems."⁶⁷

The goal of the NTA provision is to enable the Taxpayer Advocate to act in the interests of taxpayers.⁶⁸ The question is whether this goal is better suited to an outsider or an IRS insider. The best solution is that the role be performed exclusively by regular IRS employees and not by a taxpayer advocate at all.

63. See *id.* § 1102, 112 Stat. at 699.

64. See Tax Executives Institute Inc., *Tax Executives Institute Comments on IRS Reform Bill*, TAX NOTES TODAY 108-23, June 5, 1998, ¶ 15, available in WESTLAW, TNT Database [hereinafter Tax Executives] (recommending that the NTA be appointed by and report to the IRS Commissioner).

65. See Kornhauser, *supra* note 17, ¶¶ 50-51 (arguing that a second level of review outside the IRS is necessary in order to "watch the watcher").

66. See Internal Revenue Service Restructuring and Reform Act, § 1102, 112 Stat. at 699. This appointment is made from a list of three candidates submitted by the committee after consultation with the Commissioner of the IRS. See *id.*

67. See Tax Executives, *supra* note 64, ¶¶ 14-15 (questioning the need for complete independence of the taxpayer advocate).

68. See Internal Revenue Service Restructuring and Reform Act § 1102, 112 Stat. at 699.

The Dual Problems Dooming the Office of the NTA

The Taxpayer Representation Role Is Unnecessary

The procedural aspect of the NTA's office involves the traditional PRP's role of providing an intermediary between taxpayers and the IRS. These duties traditionally have run the gamut from tracking down computer errors to running interference between the different IRS offices on behalf of a taxpayer.⁶⁹ The expanded powers of the taxpayer advocates allow these officers to act with even more authority and decisiveness, addressing substantive problems as well as procedural disputes.⁷⁰

The taxpayer advocate's representation role is complicated because different types of taxpayers experience different problems within the IRS structure. To help simplify this role, the 1998 Act divides taxpayers into four categories.⁷¹ The four categories traditionally recognized are (1) wage and investment earners, (2) small businesses, self-employed, supplemental income, (3) middle market, large business, and (4) other.⁷² Each of these taxpayer categories is supposed to receive special treatment according to the identifiable needs of the category.⁷³ For

69. See generally Martin, *supra* note 18 (discussing the practical purpose of the PRP).

70. See Internal Revenue Service Restructuring and Reform Act, § 1102, 112 Stat. at 698-705. The scope of this authority is unclear, but is currently being discussed by IRS officials. The current NTA, W. Val Oveson, has stated that, for example, he does not envision his office issuing a TAO overturning an appeals officer's decision. See *Top IRS Officials*, *supra* note 55. This would seem to suggest that the NTA's office is limiting the extent to which it will involve itself in substantive disputes, though this may be a result of the current investigation of taxpayer advocates by the Treasury Inspector General for Tax Administration. See *id.* (stating that the investigation is focusing on "whether advocates are requiring the IRS to do things it isn't supposed to do . . .").

71. See Internal Revenue Service Restructuring and Reform Act, § 1102(c)(2)(B)(ii)(x), 112 Stat. at 700 (instructing the NTA to identify the most litigated issue per category of taxpayer).

72. See generally Amy Hamilton, *If It Ain't Broke, Don't Fix It*, IRPAC Chair Tells Rossotti, TAX NOTES TODAY 209-1, Oct. 29, 1998, available in WESTLAW, TNT Database (outlining and naming the four groups of taxpayers and the number of tax returns filed by each group); IRPAC, *IRPAC Statement on Information Reporting Program*, TAX NOTES TODAY 210-14, Oct. 28, 1998, ¶ 3, available in WESTLAW, TNT Database (highlighting the focus of the IRS and naming the four groups of taxpayers).

73. See *W&M Hearings*, *supra* note 37, ¶¶ 30-69 (statement of Charles O. Rossotti, IRS Commissioner) (discussing the different structural areas to review

example, individual taxpayers generally need significantly less time and fewer concessions than other categories of taxpayers.⁷⁴ They already have high compliance and usually seek easily administered remedies such as the granting of payment extensions or the authorization of payment plans.⁷⁵ In contrast, small businesses and the self-employed usually have more complicated problems because they must comply with the rules applicable to big business without having comparable resources.⁷⁶ These businesses shoulder the burden of unnecessarily complex tax laws.⁷⁷ Finally, there are the large businesses that undoubtedly require the most resources from the IRS grievance apparatus. The time and personnel-intensive work of IRS agents, such as audits, the Coordination Examination Program (CEP),⁷⁸ and the Industry Specialization Program (ISP),⁷⁹ are concentrated on the large

based on the type of customer).

74. See *id.* ¶¶ 76-79.

75. See *id.* ¶ 80.

76. See Margaret Richardson, *Richardson's Testimony at House Small Business Hearing on IRS's Attempts to Ease Burdens on Small Business*, TAX NOTES TODAY 209-48, Oct. 25, 1995, available in WESTLAW, TNT Database [hereinafter *Small Business Hearing*] (statement of Margaret Richardson, IRS Commissioner).

77. See Amy Hamilton, *An Agent of Change—The New Taxpayer Advocate*, TAX NOTES TODAY 160-2, Aug. 19, 1998, available in WESTLAW, TNT Database (quoting W. Val Oveson, the newly appointed NTA who believes the small business segment is one of the key areas of concern).

78. The CEP was designed to handle some of the special problems of the largest corporate taxpayers. It consumes a large number of resources because agents are unable to handle more than one customer at a time. The program consists of an almost continuous audit, with teams of IRS agents maintaining a constant presence in offices on the taxpayer's premises, continually interacting with and observing personnel. See Tax Executives Institute, *Significant Problems Encountered by Corporate Taxpayers: Comments Submitted to IRS Taxpayer Advocate*, 49 TAX EXECUTIVE 240, 242-43 (1997) (discussing the frustrations of company executives with certain aspects of the CEP program, including ineffective communication, the lack of training of agents, and the lack of control over the specialists in the program).

79. The ISP is also extremely resource-intensive. It consists of researching and reporting on specific industry types, and identifying the fact patterns of the industry in order to draw legal conclusions for the market in question. ISP usually results in a coordinated examination letter. The program operates in conjunction with the CEP, though usually not on the audit side. The combination of these two programs results in an enormous drain of IRS resources for a relatively small number of corporate taxpayers. See James E. Merritt, *Administrative Procedures: Large Case Audits; Industry Specialization Program; Coordinated Examination Program ("CEP")*, in HOW TO HANDLE A TAX CONTROVERSY AT THE IRS AND IN COURT 63, 87-88 (ALI-ABA Course of Study, Oct. 16, 1997), available in WESTLAW SC24 ALI-ABA 63.

businesses who typically hire the best lawyers and can prolong the resolution of a controversy for years.⁸⁰

The taxpayer advocate represents each category of taxpayers differently depending on their particular needs.⁸¹ There appears, however, to be a general consensus among the IRS, the new NTA, and lawmakers that large businesses do not need advocacy or assistance from the Office of the NTA because they have the money to hire their own advocate.⁸² The suggestion that large businesses can hire their own advocates carries with it the disturbing inference that the taxpayer advocate is supposed to provide legal representation. The implication derived from this inference is that the purpose of the taxpayer advocate is not to solve problems, but to act as counsel. If the inference is that the taxpayer advocate is expected to resolve procedural breakdowns in the process of dealing with the IRS, such breakdowns are as likely, if not more likely, to occur with a large business than a small business or individual. If, however, the inference is that large businesses are able to hire their own advocates for the resolution of procedural disputes and that the taxpayer advocate is not acting as counsel for the taxpayer, the question arises whether the role of the taxpayer advocate is still necessary.

The Office of the NTA resulted from early complaints that the IRS was not particularly responsive to taxpayer questions and concerns.⁸³ Because one of the goals of today's IRS is to restructure itself as a customer service organization,⁸⁴ this representa-

80. "The IRS can't spend the time and money necessary to outgun corporate tax lawyers. . . . Big corporations hire tax lawyers, and go to court for years" 138 CONG. REC. S15,287-339 (daily ed. Sept. 26, 1992) (statement of Sen. Metzenbaum).

81. See *W&M Hearings*, *supra* note 37, ¶ 35 (statement of Charles O. Rossotti, IRS Commissioner) (discussing the differing structural areas to review based on the type of customer).

82. See *id.* ¶ 137 (recommending a taxpayer advocate for individual taxpayers, small business, and the tax exempt, but stating that large businesses "can probably take care of themselves").

83. See Martin, *supra* note 18, ¶¶ 3-10 (discussing the history of the NTA).

84. See Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 1002, 112 Stat. 685, 690 (stating IRS mission to "place a greater emphasis on serving the public and meeting taxpayer needs"); National Comm'n on Restructuring the Internal Revenue Serv., *IRS Restructuring Commission's Final Report*, TAX NOTES TODAY 123, June 26, 1997, available in WESTLAW, TNT Database (making recommendations for a new, customer-focused institution).

tion role would become redundant and should be eliminated in a newly reorganized IRS. Unfortunately, it may be difficult to bring about change at the IRS without some corresponding changes in the tax laws.⁸⁵ This proposition, as well as the success of studying litigation patterns in the past in reforming substantive tax law,⁸⁶ makes the reporting to Congress of the top ten litigation problems per category of taxpayer⁸⁷ the more important objective of the NTA's office.

The Substantive Reporting Performed by the NTA Is Suspect

The NTA is responsible, inter alia, for two substantive reporting requirements: The first is the top twenty problems facing taxpayers, and the second is the top ten most litigated issues per category of taxpayer.⁸⁸ Both reporting requirements must be submitted to Congress in the NTA's annual report by December 31 of each year.⁸⁹

The Department of Justice has suggested that submitting the annual report to Congress without review by the Commissioner, secretary of the treasury, the oversight board, or any other employee or officer of the Department of the Treasury or the Office of Management and Budget may "interfere with the President's control over the executive branch and with his legitimate interest in overseeing the presentation of the executive branch's views to Congress."⁹⁰ Because there has been no case challenging the independent reporting requirement, it remains to be seen

85. See Tom Herman, *Tax Report: Briefs*, WALL ST. J., Nov. 25, 1998, at A1 ("Restructuring the IRS without the tax law it administers is like trying to turn a Winnebago around without taking it out of its garage." (quoting Professor Michael J. Graetz)).

86. See *infra* note 111 and accompanying text.

87. See Internal Revenue Service Restructuring and Reform Act § 1102, 112 Stat. at 700; *supra* note 71.

88. See Internal Revenue Service Restructuring and Reform Act § 1102, 112 Stat. at 700. Although there are other substantive requirements of the NTA, this Note focuses primarily on the requirements ordering the NTA to report on the most common problems that taxpayers encounter.

89. See *id.*

90. See L. Anthony Sutin, *Justice Letter Raising Constitutional Concerns in IRS Reform*, TAX NOTES TODAY 112-41, June 11, 1998, ¶ 12, available in WESTLAW, TNT Database.

whether the requirement will stand. Regardless of the constitutionality of the provision, it may not be warranted.

Historically, the IRS has reported inaccurate information pertaining to its own activities.⁹¹ When accurate information about the IRS has come to light, its source typically has been the General Accounting Office (GAO).⁹² Surprisingly, under the provisions of the 1998 Act, the responsibility of releasing information about the IRS has shifted from the GAO to the NTA.⁹³ The practical result is that the GAO, the only truly independent oversight agency releasing information about the IRS, has been cut off.⁹⁴ All information about the IRS now will come from the IRS or the committee responsible for the IRS.⁹⁵

Because the main body of the IRS traditionally has been unsuccessful in releasing accurate information,⁹⁶ the NTA is the only remaining avenue for the dissemination of critical information about the IRS. The NTA, however, remains a part of the IRS structure as an IRS employee,⁹⁷ and, as a result, the NTA

91. This problem largely results from an inability to get the information because of a lack of valid processes or statistics. See General Accounting Office, *GAO Says IRS Underestimated Amount of Additional Tax Recommended by Examination Staff*, TAX NOTES TODAY 189-25, Sept. 15, 1988, available in WESTLAW, TNT Database (discussing the IRS's consistent underestimations of audit revenues to Congress); Internal Revenue Serv., *Report on IRS Internal Audit of District's Use of Enforcement Statistics*, TAX NOTES TODAY 247-21, Dec. 12, 1997, available in WESTLAW, TNT Database ("[W]e may have strayed too far from our emphasis on productivity, and from the effective use of statistical tools.").

92. See, e.g., Jennie Stathis, *GAO Compiles Recommendations from Its 1990 Tax Studies*, TAX NOTES TODAY 85-25, Apr. 16, 1991, available in WESTLAW, TNT Database (outlining five areas in which Congress and the IRS should act to improve tax systems, including falling compliance rates, revenue estimation errors, and growth in accounts receivable).

93. See Internal Revenue Service Restructuring and Reform Act § 4001, 112 Stat. at 783 (requiring that all requests for investigations of the IRS be approved by the Joint Committee on Taxation unless made by the chairman or a ranking member of a committee or subcommittee). This requirement effectively means that the tax writing chairs are controlling the flow of information. It does not mean that the GAO is precluded entirely from releasing information regarding the IRS. On the contrary, the Joint Committee on Taxation can still allow the GAO to investigate the IRS.

94. See *id.*

95. See *id.*

96. See *supra* note 91 and accompanying text.

97. See Internal Revenue Service Restructuring and Reform Act § 1102, 112 Stat. at 699 (stating that the NTA "shall report directly to the Commissioner of Internal Revenue").

has legitimate reasons for not wanting to rock the boat.⁹⁸ For example, releasing negative statistics about IRS abuses could, if opposed by the IRS, result in a lack of cooperation between the main collection agency and the Office of the NTA. As a result, the NTA might decide not to release the information obtained, delay the release of the information, or smooth the passage of the information in order to appease the Commissioner and ensure the effective promotion of his duties.

A REALISTIC PERSPECTIVE ON THE NEED FOR AN OFFICE OF THE NTA

Despite these laudatory functions, the taxpayer advocate, just as the Taxpayer Ombudsman before him, appears to have accomplished very little in resolving taxpayers' problems with the IRS. Rather the taxpayer advocate seems to act merely as a clearing-house for moving taxpayer cases around the various divisions of the Service.⁹⁹

The Underlying Goals of the NTA Can Be Accomplished Through Other Means

In the fall of 1997, the IRS decided to implement a new program called Problem Solving Days.¹⁰⁰ Under this program, each district would hold a special day each month for taxpayers to come in and meet with IRS personnel to resolve special tax problems that taxpayers were encountering.¹⁰¹ In Commissioner Rossotti's report to the House Ways and Means Committee, he identified the Problem Solving Days program as a huge success, citing examples from the first problem solving day.¹⁰²

An interesting result of the Problem Solving Days program demonstrated that although many taxpayers did not receive the

98. See *W&M Hearings*, *supra* note 37, ¶ 229 (statement of Rep. Dunn) ("I fear that if it continues to be somebody who's hired by and paid by the head of the IRS, that that would be the *IRS Advocate*." (emphasis added)).

99. Barbara T. Kaplan, *Corporate Income Tax Controversies and Litigation: Can the Scales of Justice Be Tipped in the Taxpayer's Favor?*, in *TAX STRATEGIES FOR CORPORATE ACQUISITIONS, DISPOSITIONS, SPIN-OFFS, JOINT VENTURES, FINANCINGS, REORGANIZATIONS & RESTRUCTURINGS* 961, 1090 (PLI Tax Law & Estate Planning Series No. J-434, 1998).

100. See *Annual Report*, *supra* note 2, ¶ 340.

101. See *W&M Hearings*, *supra* note 37, ¶¶ 104-08.

102. See *id.* ¶¶ 110-15.

answer they anticipated, the mere fact that someone sat down, listened to their complaint, and explained the reasons they could not give exactly what taxpayers wanted was enough to satisfy the taxpayers.¹⁰³ These taxpayers rated their satisfaction with the IRS an average of 6.4 on a scale of one to seven.¹⁰⁴ These results demonstrate that it is feasible for conventional IRS employees to restore public confidence. It appears, however, that the IRS is moving in the opposite direction given its recent statement of its intention to do away with Problem Solving Days altogether.¹⁰⁵

The NTA is supposed to serve as the voice for taxpayer rights, both within the IRS and before Congress in proposing reform.¹⁰⁶ The NTA has been charged with "assist[ing] taxpayers in resolving problems with the Internal Revenue Service"¹⁰⁷ Of course, without information critical of the PRP and the taxpayer advocates, the office is unable to perform its statutory duty.¹⁰⁸ Although the goal of assisting taxpayers with their problems is the one that most requires an advocate, it is unclear why the taxpayer cannot hire an independent advocate for substantive questions of law who will give well-established, clear guidelines to follow that afford answers to procedural questions.

The requirement that the NTA report on the ten most litigated issues between taxpayers and the IRS and the twenty most common problems encountered by taxpayers as well as proposed solutions indicates that congressional action will be required to abate these problems.¹⁰⁹ The study of litigation patterns has proven to be a successful method of introducing changes to tax law,¹¹⁰ however, securing congressional approval is a painstaking

103. See *id.*

104. See *id.* ¶ 107.

105. See Karen Hube, *Tax Report: Problem-Solving Days Incur Big Costs for the IRS and May Be Phased Out*, WALL ST. J., Nov. 18, 1998, at A1 (citing diminishing attendance and expensive personnel costs).

106. See Monks, *supra* note 36, at 458 (discussing differences in the role played by the taxpayer advocates and the ways in which the PRP is changed as a result).

107. Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 1102, 112 Stat. 685, 699.

108. See *id.* § 1102, 112 Stat. at 699-705.

109. "Legislative change is warranted where current tax law may prevent the resolution of taxpayer problems or where it is felt service might be improved or burden to the taxpayer reduced." *Annual Report*, *supra* note 2, ¶ 141.

110. A recent example is the GAO litigation study over the amortization of goodwill

and costly procedure for tax reform.¹¹¹ It can take years for Congress to examine an issue, and, even then, there is no guarantee that the proposition will pass both houses and avoid a presidential veto. The IRS has tracked statistics for years on similar important issues.¹¹² There is no reason that this information cannot be tracked through normal IRS procedures and then reported to Congress.

Eliminating the NTA's Role of Procedural Taxpayer Dispute Resolution

Commissioner Rossotti has testified to the Ways and Means Committee that he felt that what the IRS "need[s] to do is convert the whole IRS much more to thinking of themselves as taxpayer advocates, as problem solvers for the taxpayers" ¹¹³ As shown by the success of Problem Solving Days, IRS agents are just as capable of acting on behalf of the taxpayer as PROs.¹¹⁴

The PRP was established to handle procedural difficulties such as locating lost returns, pulling computer records, and

and other intangible assets that resulted in the addition of § 197 of the Internal Revenue Code. See General Accounting Office, *Tax Policy: Issues and Policy Proposals Regarding Tax Treatment of Intangible Assets*, TAX NOTES TODAY 169-1, Aug. 13, 1991, available in WESTLAW, TNT Database (discussing the use of IRS data on open purchased intangible asset cases from nine industry groups from 1989 to recommend congressional tax law revision to allow amortization of purchased intangibles over statutory cost recovery periods). For a review of the history leading to the enactment of § 197, see Catherine L. Hammond, Note, *The Amortization of Intangible Assets: § 197 of the Internal Revenue Code Settles the Confusion*, 27 CONN. L. REV. 915 (1995). For a review of the relevant case law, see NYSBA *Endorses, and Recommends Changes in Proposed Legislation on Treatment of Intangible Assets*, TAX NOTES TODAY 214-49, Oct., 17, 1991, available in WESTLAW, TNT Database.

111. For example, although House Ways and Means Committee chairman Dan Rostenkowski introduced H.R. 3035 on July 25, 1991 to address the intangibles problem, § 197 was not approved until 1993 when Congress passed the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312.

112. "[The] IRS has numerous information gathering efforts that collect a great deal of information related to the mistreatment of taxpayers." John Lovelady et al., *IRS Needs More Controls to Protect Taxpayer Info GAO Finds*, TAX NOTES TODAY 211-27, Oct. 26, 1994, available in WESTLAW, TNT Database (arguing that the IRS should adopt the GAO recommendation to establish a definition of taxpayer abuse and identify and gather the necessary information to track systematically the nature and extent of such incidents).

113. *W&M Hearings*, *supra* note 37, ¶ 149 (statement of IRS Commissioner Rossotti).

114. See *id.* ¶¶ 102-15.

facilitating communications between offices and districts so the left hand could find out what the right hand had done.¹¹⁵ With consolidation of computers, electronic technology, and the centralization of records, most of these procedural difficulties will vanish.¹¹⁶ In light of the recent furor over taxpayer abuse at the hands of the IRS,¹¹⁷ it is understandable that Congress would change the role of the neutral arbiter to one of protector. This change is not necessary, however, and diverts attention from the real reform efforts that are needed.¹¹⁸

Lawyers and Certified Public Accountants (CPAs) are the traditional representatives of taxpayers in their disputes with the IRS.¹¹⁹ In the stronger office of the NTA as established by the 1998 Act, taxpayers may feel as though taxpayer advocates are representing them. The problem is that the taxpayer advocates do not work directly for the taxpayer, regardless of their titles;¹²⁰ taxpayer advocates are employees of the government

115. See *supra* notes 19-21 and accompanying text.

116. See Internal Revenue Serv., *Dolan Testifies at House Panel Hearing on IRS's Budget*, TAX NOTES TODAY 44-71, Feb. 23, 1993, available in WESTLAW, TNT Database (discussing the role of new computer systems as part of the Tax Systems Modernization effort); Tom Herman, *Tax Report: A Big Contract Will Soon Be Awarded by the IRS*, WALL ST. J., Dec. 2, 1998, at A1.

117. See *supra* notes 1-3 and accompanying text.

118. The dangers of legislating based on these types of taxpayer horror stories are twofold. First, the legislation is not based on necessary reforms that actually will address the problems, but instead on the need to "do something." Second, the testimonials are not the most reliable evidence of the problems that are occurring. For example, one story that received a great deal of attention in the media and the book *The Power to Destroy* was shown later to be, at a minimum, grossly exaggerated. See John D. McKinnon, *Highly Publicized Horror Story that Led to Curbs on IRS Quietly Unravels in Virginia Civil Court*, WALL ST. J., Dec. 9, 1999, at A28 (citing the curbs on the IRS as "unfairly [tying] the agency's hands by slowing enforcement").

119. This is not to say that only lawyers and CPAs may represent a taxpayer before the IRS. Enrolled agents and actuaries are specifically authorized to act as representatives, as well as others who qualify under sections 10.3 or 10.7 of the regulations. See 31 C.F.R. §§ 10.3, 10.7 (1999). Government employees are also authorized to serve if their actions do not violate 18 U.S.C. §§ 203 or 205. See 31 C.F.R. § 10.3(f). Adhering to the requirements of § 203, which prohibits a governmental employee from accepting gifts or money, is not a problem. See 48 U.S.C. § 203 (1994). On the other hand, § 205 prohibits governmental employees from acting as an agent against the government unless such action falls within their official duties. See *id.* § 205. Taxpayer advocates must walk a fine line between their duties on behalf of the taxpayer and their duties on behalf of the government. Presumably, taxpayers should be forewarned of this potential conflict.

120. See *W&M Hearings*, *supra* note 37, ¶ 226 (statement of Rep. Dunn) (discuss-

and it is not their job to represent the taxpayer.¹²¹ Therefore, the only reason people should need the taxpayer advocate is for procedural disputes.¹²² These matters can be handled easily by consolidated internal processes, or even deferred to outside arbitration to allow for maximum neutrality.

Alternatives to the current NTA scheme are more attractive and require only modest adjustments toward reform. For example, the GAO can continue effectively in its role as the overseer of statistics on the IRS. Congress can increase the IRS's records and reporting requirements in order to facilitate more accurate reporting of IRS activities. The IRS controversy lawyers are equally as capable as the NTA, if not more so, of determining what types of reforms will best address recurring problems.

Prioritizing Substantive Tax Reform in the Office of the NTA

The dual mission of the NTA may be creating a situation in which the more important substantive tax law reform may be losing out to the resolution of taxpayer disputes and procedural problems. In the most recent NTA's report to Congress, of the twenty most commonly encountered problems reported by taxpayers, only four were substantive in nature.¹²³ The remaining problems were all administrative or procedural.¹²⁴

ing the necessity of ridding the IRS of the "us versus them" mentality).

121. See Kornhauser, *supra* note 17, ¶ 58 (discussing how an external ombudsman can improve the negative perceptions taxpayers have of the IRS by providing back-up to normal procedures and acting as a safety valve when regular channels fail).

122. See *id.*

123. These substantive problems were identified as follows: (1) complexity of the tax law; (2) problems of divorced and separated taxpayers; (3) difficulty in understanding federal tax deposit requirements; and (4) compliance burden on small businesses. See *Annual Report*, *supra* note 2. These problems were substantially similar to those articulated in the first NTA report: (1) complexity of the tax law; (2) difficulty in understanding federal tax deposit requirements; and (3) compliance burdens on small business. See Alvin M. Feit, *The Taxpayer Advocate*, 28 TAX ADVISER 243, 244 (1997) (summarizing the NTA's first annual report to Congress under TBOR2). This report, though filed under TBOR2, was the result of a provision that was carried over into the IRS Restructuring and Reform Act of 1998.

The additional problem of divorced and separated taxpayers is primarily a result of the passage of the innocent spouse provision in the IRS Restructuring and Reform Act of 1998. Pub. L. No. 105-206, § 3201, 112 Stat. 685, 734-40.

124. See *Annual Report*, *supra* note 2 (listing the remaining problems as: (1) clarity and tone of IRS communications; (2) administration of the Earned Income Tax Credit (EITC); (3) lack of one-stop service; (4) penalty process administration; (5) lack of

Substantive tax law reform should be the priority for instituting change in the IRS. People who deal with the IRS on a regular basis, from tax practitioners to those within the PRP, have agreed that the complexity of the tax law is the most serious problem facing taxpayers.¹²⁵ This is not to say that the procedural problems should not be fixed, but improved computer systems, an integrated system, and personnel training can deal with many of the problems taxpayers have had with the IRS.¹²⁶ Nevertheless, because significant bureaucratic inertia within the IRS poses such a substantial obstacle to comprehensive reform, reform capital should not be squandered by focusing exclusively on procedural problems that could be fixed internally; rather, Congress and other authorities should aggressively target substantive areas for improvement.

acknowledgement of taxpayer correspondence; (6) lack of clarity and consistency in the Offer-In-Compromise (OIC) program; (7) problems of address changes; (8) lack of responsiveness; (9) separate mailings of error notices and refund checks; (10) inability to access the toll-free number; (11) delays in compliance contacts; (12) lack of concern for taxpayers' problems; (13) cost to taxpayers for electronic filing; (14) Automated Collection System (ACS) levy release delays; (15) inconsistent and untimely handling of audit reconsiderations; and (16) delays in processing Automated Substitute for Returns (ASFRs) at the service center). These are substantially similar to the 1997 Advocate's Report filed under TBOR2. Only the abatement of interest from IRS delays and the burdensome cash management practices have been resolved.

125. See, e.g., Feit, *supra* note 123, at 244 (summarizing the NTA's first report to Congress); Fran Romano et al., *Testimony of District Taxpayer Advocates at W&M Oversight Panel Hearing*, TAX NOTES TODAY 23-23, Feb. 4, 1998, available in WESTLAW, TNT Database (statements of Elayne M. Goldstein, Midwest District Taxpayer Advocate, and Sandra Ling, Pacific-Northwest District Taxpayer Advocate); Tax Executives Institute, *supra* note 78, at 240 (discussing the necessity for simplifying the tax law in order to minimize the burdens on the corporate taxpayer); *W&M Hearings*, *supra* note 37 (statement of Lee R. Monks, former NTA, summarizing the efforts of the NTA office during the previous year).

126. See, e.g., Status of Open Recommendations-Improving Operations of Federal Departments and Agencies, 98 GAO Op. 1, 126-29 (Jan. 30, 1998) (discussing the problems of system modernization and taxpayer service, specifically, one-stop service, taxpayer burdens of time and frustration, telephone accessibility, and electronic filing). New computer systems are in the planning stages, with a recent contract being awarded to help the IRS replace its outdated technology systems. See Herman, *supra* note 116 (citing Commissioner Rossotti's conclusion upon taking control that the IRS was "really an agency out of date [not] an agency out of control"). This should address problems such as erroneous notices, delays, mailing, and address problems. Integrated systems can be programmed to track statistics on everything from the number of TAOs issued to the types of cases that go to the Tax Court. The personnel problems that remain are a part of the IRS culture that must be changed from within.

Given that the main goals of having an Office of the NTA can be addressed readily in other ways, the NTA should limit himself to helping implement these changes within the IRS with the goal that the Office of the NTA be phased out of existence. Local taxpayer advocates can be absorbed gradually into the main body of IRS employees as part of a new structure that emphasizes cooperation rather than adversity in the collection of federal taxes.

Representative Houghton told Commissioner Rossotti that "[t]here are two issues when you confront a problem. One is doing things right and the other is doing the right things."¹²⁷ Congress has given the IRS the tools to do things right. The IRS is capable of doing the right things as well, even without a NTA.

CONCLUSION

The NTA, though a predictable response to the recent outcry over IRS abuses, is not a necessary, or even appropriate, mechanism to address the problems of a beleaguered IRS. A better approach would phase out the NTA and would direct resources toward improving the training of conventional IRS personnel. The benefits of this new approach are threefold. First, it is more cost effective. In an era of smaller government, having two people do the same job when only one person is necessary is economically inefficient. An up-front outlay for retraining and a commitment to a change in IRS culture will do more in the long term when the agency can operate leanly.

The second benefit is efficiency. The NTA approach places too much emphasis on damage control—that is, reacting to full-blown problems, rather than avoiding them. The focus should be on the IRS getting it right from day one. Although it is nice to talk about taxpayer advocates who help fix the problems encountered by unfortunate taxpayers, most taxpayers would prefer not to have continuous dealings with the IRS. The way to achieve this is to set up proper procedures in the first instance and give revenue agents, examination and appeals officers, and auditors

127. House Ways and Means Oversight Subcomm., *Unofficial Transcript of W&M Oversight Hearing on Taxpayer Advocate Report*, TAX NOTES TODAY 31-20, Feb. 10, 1999, available in WESTLAW, TNT Database (citing Peter Drucker).

the flexibility now enjoyed by taxpayer advocates. The IRS is on its way to doing this by eliminating such practices as the pay-per-audit policies that were occurring in many districts.¹²⁸

Finally, the third important benefit of the recommended approach is simplicity. There is no reason not to simplify the tax collection process. Multiple routes of appeals and multiple layers of IRS employees clearly add confusion to taxpayer relations and promote hostility on the part of the taxpayer.¹²⁹ Taxpayers want to know how to most effectively and efficiently deal with the IRS.¹³⁰ Conventional employees are capable of acting fairly with taxpayers and reducing the confusion of the IRS bureaucracy.¹³¹

The Office of the NTA is in a unique position. It is a department whose goal should be to assure its own extinction. To facilitate this goal, Congress and the Commissioner need to stop talking about taxpayer advocate career tracks and begin talking to the IRS.

Heather B. Conoboy

128. See *W&M Hearing*, *supra* note 37, ¶¶ 85-92 (statement of Charles O. Rossotti, IRS Commissioner).

129. See, e.g., Shirley D. Peterson, *IRS Vision: Changing with America*, 13 VA. TAX REV. 187, 191 (1993) ("[O]ur entangled internal systems frequently resulted in frustrated customers with unresolved problems."). Peterson broke the need for IRS reform into four categories: change in philosophy, change in programs, change in the organizational structure, and increasing the role of employees. See *id.* at 188-93.

130. See *id.* at 190 (discussing taxpayer expectations of one-stop service).

131. See *supra* notes 113-14 and accompanying text.