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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

May 26, 2022

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

Dear Commissioner Rettig:

We are writing you regarding disturbing information that came to light in a report issued by the Treasury Inspector General for Tax Administration (TIGTA) and has been referenced in several news accounts. TIGTA released the audit report, “A Service-Wide Strategy Is Needed to Address Challenges Limiting Growth in Business Tax Return Electronic Filing” on May 4, 2022. The audit states:

This audit was initiated because the IRS’s continued inability to process backlogs of paper-filed tax returns contributed to management’s decision to destroy an estimated 30 million paper-filed information return documents in March 2021. The IRS uses these documents to conduct post-processing compliance matches to identify taxpayers who do not accurately report their income.¹

This information is deeply concerning to many, especially in the tax professional community.

On March 17, 2022, in an appearance before the House Ways and Means Committee, Subcommittee on Oversight on the 2022 Filing Season, you were quoted as expecting the backlog of unprocessed tax returns to clear before the end of 2022. During that hearing you said, “As of today, barring any unforeseen circumstances, if the world stays as it is today, we will be what we call ‘healthy’ by the end of calendar year 2022, and enter the 2023 filing season with normal inventories.”² In written testimony submitted to the U.S. Senate Committee on Finance in April of 2022, you wrote:

¹ TIGTA, “A Service-Wide Strategy Is Needed to Address Challenges Limiting Growth in Business Tax Return Electronic Filing, May 4, 2022, Report Number: 2022-40-036, at <https://www.treasury.gov/tigta/auditreports/2022reports/202240036fr.pdf>.

² Dore, Kate, “Tax return backlog will ‘absolutely’ clear by end of 2022, says IRS Commissioner Charles Rettig” CNBC, March 18, 2022, at <https://www.cnbc.com/2022/03/18/irs-commissioner-says-tax-return-backlog-will-clear-by-end-of-2022.html>.

The IRS pursued significant actions during the 2021 filing season to address the return and correspondence inventory. But due to resource issues and numerous unique factors tied to new legislation and the pandemic, we have entered the 2022 filing season with a significant inventory of unprocessed returns and correspondence...”³

Your statements in neither hearing suggest that the actions taken to clear the backlog or the “significant actions” pursued benefitted from the destruction of 30 million information returns.

A Tax Notes article noted that during the period IRS was destroying 30 million information returns and while the COVID pandemic harmed millions of Americans, “[the IRS] was imposing penalties for failing to file timely and accurate information returns, which, for all anyone knows, may have been among the documents destroyed.”⁴ The document destruction also happened during a time many called for the IRS to exercise penalty relief. Since the summer of 2020, the American Institute of Certified Public Accountants (AICPA) has released at least seven letters or statements calling for some form of penalty relief from the IRS.

Senate Republicans also asked the IRS for taxpayer relief due to the pandemic. In a letter dated February 10, 2022 (the February letter), many Senate Republicans, including all Republican members of the Senate Finance Committee, sent a letter to Treasury Secretary Yellen and you that says,

While recognizing the challenges the IRS currently operates under, we find the current situation at the IRS alarming. Given the current circumstances, we respectfully request the IRS consider exercising its existing authority to undertake measures to bring immediate relief to taxpayers and reduce backlogs, during this tax filing season....⁵

Among other suggested solutions, the February letter asked that the IRS “[c]ommunicate to the public, in a clear and timely manner, the status of IRS operations, current processing times, levels of unopened mail, number of error resolution cases, and dates to which mail, including paper and amended returns, has been processed.”⁶ It is concerning that despite repeated requests from the tax professional community and Congress, the IRS never disclosed that among the measures taken to reduce the backlog was the decision to destroy 30 million information returns.

The information disclosed in the May 4 TIGTA report has surprised many in Congress and in the tax community. The destruction of documents ensuring taxpayers did not underreport income or inflate a deduction is concerning. It also raises questions about the IRS’s ability to administer the tax code and ensure compliance. In order to understand how the destruction of 30 million

³ U.S. Senate Committee on Finance, “The IRS, the President's Fiscal Year 2023 Budget, and the 2022 Filing Season,” April 7, 2022, at <https://www.finance.senate.gov/hearings/the-irs-the-presidents-fiscal-year-2023-budget-and-the-2022-filing-season>.

⁴ Id.

⁵ Letter to Secretary Yellen and Commissioner Rettig, February 10, 2022, at <https://www.finance.senate.gov/ranking-members-news/republicans-urge-irs-to-provide-maximum-taxpayer-support-during-difficult-filing-season>.

⁶ Id.

information returns was allowed to happen and the ramifications for taxpayers, we respectfully ask that you respond to the following by June 5, 2022:

1. Please describe specifically what information return documents (e.g., 1099-MISC) were destroyed, exactly how many were destroyed, what tax periods the destroyed documents covered, how the documents were destroyed and how you complied with document retention requirements.
2. Based on the most recent IRS analysis of the tax gap (2011-2013), 56 percent, or \$245 billion, of the tax gap comes from underreporting by individuals.⁷ Also, according to the IRS FY 2020 Budget and Performance plan, the Automated Underreporter system where information return matching happens had a return on investment of \$25.80 for every \$1 spent.⁸ What is the estimated tax revenue lost because 30 million information returns were destroyed instead of processed?
3. Did the IRS assess penalties against information return filers for failing to timely file or submit accurate information returns (e.g., 26 U.S.C. §§ 6721 or 6722) when the paper information returns were actually in the IRS's possession and later destroyed? If penalty waivers were provided for paper information returns, were they also waived for e-filed information returns? If not, why was e-filing treated differently than paper filing?
4. Please describe in detail any other instances when the IRS destroyed tax documents filed, as required by law, without processing them.
5. Please provide the legal basis for this decision and describe how the conclusion was made to destroy the documents, and provide a copy of the risk assessment completed by the Small Business/Self-Employed Division that evaluates the impact these missing information reporting documents would have on the IRS's post-processing compliance activities. Please note and document what specific IRS personnel were involved in the decision to destroy the information returns, the date of the final decision to destroy the returns, and the date at which the risk assessment began.
6. Has the destruction of 30 million information returns negatively affected the ability of qualifying taxpayers to receive the earned income tax credit or the ability to accurately record withholding amounts credited on a destroyed Form 1099?
7. The May 4 TIGTA report suggests that after the conclusion of a tax year, the IRS is not able to process information returns for that year "because the system used to process these information returns is taken offline for programming...."⁹ Please confirm whether or not that suggestion is accurate and if it applies to all late or amended information returns filed after the conclusion of a tax year.

⁷ Internal Revenue Service, Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2011-2013, Publication 1415 (Rev. 9-2019) at <https://www.irs.gov/pub/irs-pdf/p1415.pdf>.

⁸ Internal Revenue Service, Congressional Budget Justification and Annual Performance Report and Plan, Fiscal Year 2020, March 18, 2019 at <https://www.irs.gov/pub/irs-prior/p4450--2019.pdf>.

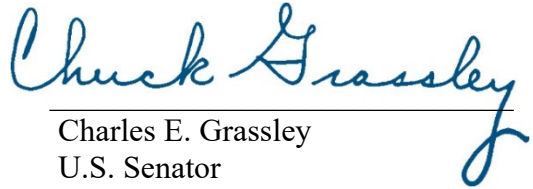
⁹ TIGTA, "A Service-Wide Strategy Is Needed to Address Challenges Limiting Growth in Business Tax Return Electronic Filing, May 4, 2022, Report Number: 2022-40-036, at <https://www.treasury.gov/tigta/auditreports/2022reports/202240036fr.pdf>.

Thank you for your attention to this important matter.

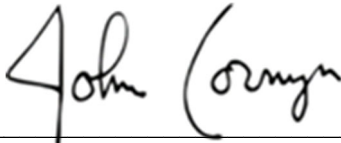
Sincerely,



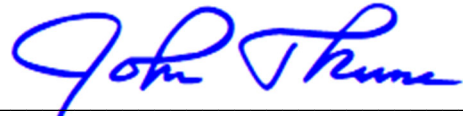
Mike Crapo
U.S. Senator



Charles E. Grassley
U.S. Senator



John Cornyn
U.S. Senator



John Thune
U.S. Senator



Richard Burr
U.S. Senator



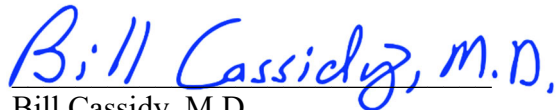
Rob Portman
U.S. Senator



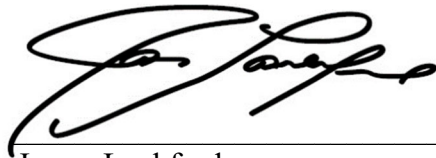
Pat Toomey
U.S. Senator



Tim Scott
U.S. Senator



Bill Cassidy, M.D.
U.S. Senator



James Lankford
U.S. Senator



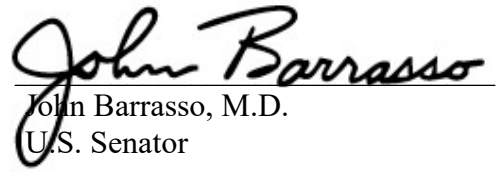
Steve Daines
U.S. Senator



Todd Young
U.S. Senator

A handwritten signature in blue ink that reads "Ben Sasse". The signature is written in a cursive style with a horizontal line underneath.

Ben Sasse
U.S. Senator

A handwritten signature in blue ink that reads "John Barrasso". The signature is written in a cursive style with a horizontal line underneath.

John Barrasso, M.D.
U.S. Senator