

**WRITTEN TESTIMONY OF
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SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
COMMITTEE
ON IMPLEMENTATION OF THE AFFORDABLE CARE ACT
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INTRODUCTION

Chairman Johnson, Ranking Member Carper and Members of the Committee, thank you for the opportunity to appear before you today to update you on the work that the IRS has done to fulfill our responsibilities under the Affordable Care Act (ACA) for this filing season.

The IRS has been charged with implementing the numerous tax-related provisions of the ACA. This testimony will focus on two major provisions that took effect last year – the premium tax credit and the individual shared responsibility provision. In preparation for the 2015 filing season, the IRS did substantial work to ready our business processes and systems to facilitate return filing and compliance with these two provisions, and to ensure that taxpayers would know how these two provisions would affect them at tax time.

I can report that with the exception of the continued erosion of taxpayer services due to budget cuts, the 2015 filing season has gone reasonably well, generally and as it relates specifically to taxpayers affected by the ACA provisions mentioned above. I will provide further details on the filing season later in this testimony.

I would note that all the work the IRS has done and continues to do to implement the major tax-related provisions of the ACA has occurred in the absence of funding that had been requested for this effort. Nonetheless, the IRS continues to deliver on its Congressionally-directed duties under the ACA and other legislation, including the Foreign Account Tax Compliance Act (FATCA).

EARLY ACA IMPLEMENTATION EFFORTS

The IRS' work in relation to the ACA started soon after the legislation was signed into law in March 2010, as the agency moved quickly to implement a number of tax-related provisions that became effective immediately. These provisions included: the Small Business Health Care Tax Credit; the tax credits and grants available for Qualifying Therapeutic Discovery Projects; the expansion of the tax

exclusion for student loan forgiveness for health care professionals working in underserved areas; and the Indoor Tanning Services Excise Tax. Other tax-related ACA provisions implemented by the IRS since 2010 include the Branded Prescription Drug Fee and the Health Insurance Provider Fee.

Another ACA implementation effort by the IRS has involved providing information to facilitate the delivery of advance payments of premium tax credits that are designed to help millions of American families obtain affordable health insurance coverage through the federal and state Health Insurance Marketplaces. While the operation of these Marketplaces is overseen by the Department of Health and Human Services (HHS), the IRS has the limited role of providing Marketplaces with data and computational services for use in their determinations about eligibility for financial assistance.

In particular, the IRS provides information through the Centers for Medicare and Medicaid Services' Data Services Hub in response to requests from the Marketplace for federal taxpayer return data. In response to such a request, the IRS securely provides certain limited tax data from the applicant's most recent federal income tax return, as specifically authorized by the ACA. State Medicaid and Children's Health Insurance Program agencies may also choose to request the tax data for their eligibility determinations.

Separate from the process of providing limited tax return data to the Marketplace for eligibility determinations, the IRS also supports the Marketplace by providing an optional computational service, known as the Premium Tax Credit Computation Engine. This computational service is used if an applicant chooses to have an advance payment of the premium tax credit sent straight to the insurer on a monthly basis throughout the year.

After the Marketplace determines a predicted annual income for the applicant, and without identifying the applicant, the Marketplace submits a few data elements to the IRS' optional computational service. The IRS, through this computational service, provides the Marketplace with a single figure: the maximum advance premium tax credit for which the applicant may be eligible based on those data inputs.

The systems and processes the IRS developed to support enrollment in the Marketplaces were launched on schedule in October 2013. The Treasury Inspector General for Tax Administration (TIGTA) issued a report in July 2014 on the IRS' performance in regard to the more than 27 million requests for federal taxpayer return data and the more than 11 million computational requests received between October 1, 2013 and March 31, 2014. TIGTA determined that the IRS provided accurate responses for 99.97 percent of the requests for return data and 100 percent of the computational requests that TIGTA reviewed.

During the 2015 open enrollment period, the IRS processed more than 25 million requests for federal tax return data and more than 17 million computational requests, with an average IRS response time of less than five seconds.

FILING SEASON PREPARATIONS

Let me turn now to our preparations for the 2015 filing season. Prior to this filing season, the IRS worked with its partners in the software and tax products industry on the ACA-related updates to tax software products, to ensure that any taxpayers affected by the ACA tax changes would be able to prepare their returns as quickly and easily as possible. About 91 percent of tax filers used software to prepare their returns, either directly or through their return preparer, which made this early preparation especially important.

With regard to the specific provisions of the ACA, the law allows eligible individuals to choose to have their insurer receive advance payments of the premium tax credit, the amount of which is based on a determination made by the Marketplace. Taxpayers who opted for advance payment of the credit during 2014 needed to reconcile that amount with the actual credit they were eligible to claim on their 2014 return.

When filing their returns, these taxpayers calculated the actual credit they qualified for based on their actual 2014 income using the new Form 8962, *Premium Tax Credit*, which they filed with their return. If the actual premium tax credit was larger than the sum of advance payments received by their insurer during the year, this increased the taxpayer's refund or reduced the tax liability. Conversely, if the actual credit was smaller than the sum of the advance payments, this reduced the taxpayer's refund or increased the tax liability, subject to a statutory sliding scale of income-based repayment caps.

The IRS also developed the Form 1095-A, *Health Insurance Marketplace Statement*, to facilitate the reconciliation process for the premium tax credit. Last year the IRS completed testing to ensure that our systems would be ready to accept this information from Marketplaces. I am pleased to report that our systems are operating as planned.

In addition to helping individuals calculate the premium tax credit, the Marketplace information is important because it helps the IRS ensure the credit is calculated and paid out correctly. In working to prevent incorrect payments involving this credit, the IRS not only has existing data, tools and systems used to address tax noncompliance generally, but the data from the Marketplaces also allows the IRS to efficiently sort for the basic qualification and computational elements of the premium tax credit. While the IRS does not share publicly all of the tools and techniques used for detecting noncompliance, it can be noted that the IRS is, for example, able to determine:

- Whether there is a record of anyone on the return having enrolled at a Marketplace (a basic requirement to claim the credit);
- Whether any advance payments made directly to the insurance company have been properly netted against the credit calculation; and
- If the tax return reports inaccurately high premium costs or inaccurately low advance payments as compared to the Marketplace data.

In some instances, enrollees received a Form 1095-A from the Marketplaces that needed to be corrected. In an effort to minimize the impact on taxpayers this first year, the Treasury Department announced that affected taxpayers who enrolled in qualifying Marketplace coverage and filed their income tax returns using information from the original Form 1095-A need not amend their returns based on corrected information they received from the Marketplace. The IRS will not pursue the collection of any additional taxes from these individuals based on updated information in the corrected forms.

Along with the premium tax credit, the IRS' preparations for the 2015 filing season in regard to the ACA also involved implementing the individual shared responsibility provision. Under this provision, individuals are required either to have qualifying health insurance coverage for each month of the year, have an exemption, or make an individual shared responsibility payment. I would note that the vast majority of taxpayers had coverage from one source or another, such as the individual's workplace, Medicare or Medicaid. These filers needed to do nothing more than check a box on their 2014 income tax return.

The statute contains exemptions from the individual shared responsibility provision. An exemption applies for individuals who:

- Have no affordable coverage options because the minimum amount they must pay for the annual premiums is more than eight percent of their household income;
- Have a gap in coverage for less than three consecutive months; or
- Qualify for an exemption for one of several other reasons, including, but not limited to, having a hardship that prevents them from obtaining coverage.

Most individuals who qualify for an exemption and otherwise need to file a tax return must provide the exemption information with their returns. Taxpayers used new Form 8965, *Health Coverage Exemptions*, to claim an exemption from the coverage requirement, and needed to include that form with their 2014 tax return.

Individuals who did not have coverage in 2014, and did not qualify for an exemption, needed to make an individual shared responsibility payment. A worksheet was provided in the instructions for the calculation of the individual shared responsibility payment, but filers were not required to attach the worksheet to the tax return.

In general, the payment amount is either a percentage of the individual's income or a flat dollar amount, whichever is greater. The amount owed is 1/12th of the annual payment for each month that a person or the person's dependents were not covered and were not exempt. For 2014, the payment amount was the greater of:

- 1 percent of the person's household income that is above the tax return threshold for their filing status; or
- A flat dollar amount, which is \$95 per adult and \$47.50 per child, limited to a maximum of \$285.

The individual shared responsibility payment is capped at the cost of the national average premium for the bronze level health plan available through the Marketplace for that year.

It is important to note that the IRS has been and continues to be ready to work with taxpayers who for financial reasons may have difficulty meeting their tax obligations. For example, taxpayers can go to IRS.gov to apply for an online payment agreement to stretch out their payments, or to request an Offer in Compromise. In addition, the IRS provides taxpayers with fast and convenient ways to make payments.

Along with building and improving our processes and systems, and developing and issuing new forms and instructions in advance of the filing season, a major component of the IRS' preparations for the 2015 filing season was centered on making sure taxpayers would know how these two major ACA provisions might affect them at tax time.

The IRS' goal in its ACA-related communication efforts has been to help people understand their responsibilities under the law, which in turn made their return filing experience easier this year. By providing this information in advance, we attempted to answer as many questions as possible before the filing season, to limit the number of people who would need to call us for help.

Through a variety of channels, we explained to taxpayers that:

- The individual shared responsibility provision requires that they and each member of their family have qualifying health insurance, a health coverage exemption, or make a payment when filing their return;
- Taxpayers with health coverage indicate this by simply checking a box on the return, and no further action is required;
- For taxpayers who qualify for an exemption from coverage, most exemptions can be claimed when they file their return, but some exemptions must be obtained from the Marketplace; and
- Those who do not have qualifying coverage or an exemption for each month of the year need to make an individual shared responsibility payment with their return.

We also communicated about the filing requirements for the premium tax credit, explaining to taxpayers that they had to file a federal tax return if they received any advance payments of the premium tax credit in order to reconcile those payments, and that they needed to use the information on the Form 1095-A they received from the Marketplace to calculate the credit at the time of filing.

The IRS has taken – and will continue to take – a number of steps to provide information to taxpayers about these provisions. For example:

- Our website, IRS.gov, has a section that is devoted to the ACA (www.irs.gov/aca). This section contains answers to many questions about the tax provisions, as well as links that take persons to online ACA resources of other federal agencies;
- The IRS has issued more than 45 plain-language Health Care Tax Tips. These and other IRS Tax Tips are sent to more than 660,000 email subscribers in the tax and legal community as well as partner groups. These tips and other ACA information have been picked up widely by the media;
- Thirty-nine YouTube videos addressing ACA issues were posted, including a series of question-and-answer sessions covering common taxpayer questions. We will continue to add additional videos, which also include videos in Spanish and American Sign Language;
- IRS officials provided outreach to key groups such as the software community, and presented information at numerous events, including last year's five IRS Nationwide Tax Forums for tax return preparers. More than 10,000 tax professionals attended the 2014 Tax Forums, where key parts of the ACA were highlighted prominently during these three-day events, which in total provided more than 40 different tax law seminars on the ACA; and
- The agency increased its use of social media to help people learn about the major ACA tax-related provisions. For example, we shared more than 100 Tumblr posts promoting the Health Care Tax Tips mentioned above, as well as the individual shared responsibility provision, the premium tax credit and the Small Business Health Care Tax Credit. The IRS also made use of Twitter, with 490 tweets promoting these and other ACA-related topics.

Additionally, the IRS established an automated ACA telephone line so that taxpayers would not need to wait for a live IRS assistor, but could get information quickly with recorded answers to commonly asked questions. In an effort to reach low-income taxpayers, training was provided on the ACA to more than 80,000 volunteers at more than 12,000 Volunteer Income Tax Assistance clinics around the country.

ASSESSMENT OF THE 2015 FILING SEASON

Let me turn now to an assessment of the 2015 filing season, which began on schedule on January 20, and in general has run smoothly in terms of processing tax returns. Through April 3, 2015, the IRS received more than 99 million individual income tax returns and issued more than 77 million refunds for approximately \$217 billion. Thus far the average refund is over \$2,800.

We opened the 2015 filing season on schedule despite the challenges we faced. I attribute this achievement to the dedication, commitment and expertise of the IRS workforce. Along with our normal work to get ready for the filing season, additional preparation was needed. This included the efforts described above to prepare for the tax-related ACA changes, as well as a significant amount of extra work to get ready for tax changes relating to FATCA. Additionally, we had to update our systems to reflect the passage of the tax extender legislation in December.

Our experience with the 2015 filing season indicates that taxpayers have taken advantage of the help we are offering online. As of April 4, there were more than 262 million visits to IRS.gov. Taxpayers have also used the “Where’s My Refund?” electronic tracking tool more than 187 million times so far this year.

Evidence thus far indicates that taxpayers affected by the tax-related ACA provisions generally have been able to fulfill their filing obligations, although given that this was the first year these two provisions affected the filing season, it was expected that taxpayers would have questions about them. We believe two factors had a particular impact on the relatively smooth taxpayer experience:

- First, as noted above, the IRS made every effort to communicate with taxpayers and preparers about the tax changes, beginning last year and continuing through the 2015 filing season. During the filing season, in fact, there has been steady demand for information and assistance on tax-related provisions of the act. There have been more than 4.4 million visits to the section on IRS.gov devoted to the ACA, and more than 300,000 recordings played on our automated ACA telephone line.
- The second factor was the use of tax preparation software for about 91 percent of all individual tax returns this filing season – either by the taxpayers themselves or by their preparers. As noted previously, the IRS worked with its partners in the software and tax products industry prior to this filing season on the ACA-related updates to tax software products, to ensure that any taxpayers affected by the ACA tax changes would be able to prepare their returns as quickly and easily as possible.

Although return processing has gone smoothly, both in general and as related to the ACA, it should be noted that our level of customer service this filing season has been unacceptably low, both in person and on the phone, despite the best

efforts of our employees. Our low service levels were the result of the budget cuts we have had to absorb. Funding for the agency has been reduced by \$1.2 billion over the last five years, dropping to \$10.9 billion in Fiscal Year (FY) 2015. The IRS is now at its lowest level of funding since 2008. If adjusted for inflation, the agency's budget is now comparable to where it was in 1998.

Since 75 percent of the IRS budget is personnel, the agency has been absorbing the budget cuts mainly by reducing our workforce. As a result, we ended FY 2014 with more than 13,000 fewer permanent full-time employees compared with 2010. We expect to lose another 3,000 or more through attrition by the end of this fiscal year.

This year, we were forced to substantially reduce hiring of extra seasonal help we usually have during the filing season. As a result, our phone level of service at the start of the filing season was 54 percent, and dipped below 40 percent toward the end of filing season. That means more than six out of every 10 people who call could not reach a live assistor. That is truly an abysmal level of service.

As for in-person assistance, during the filing season we were very concerned about the reports we received of taxpayers lining up outside our Taxpayer Assistance Centers (TACs) hours before they opened in order to get service.

Looking ahead to next year, I am concerned that the 2016 filing season will be another challenging one. As we begin preparations for the next filing season, one complicating factor is the need for the IRS to design and implement new programs enacted by Congress. For example, the IRS has been asked, as part of the Achieving a Better Life Experience (ABLE) Act, to build a certification process for professional employer organizations on a tight time frame and without any accompanying funding.

Another possible complication to the 2016 filing season involves the group of tax extender provisions that expired at the end of 2014. I am concerned about the possibility that Congress may not act on the extenders until very late in 2015. The IRS will need to adjust its forms and systems for any tax provisions that Congress decides to extend, so I hope that any extender package will be passed as soon as possible, to give the IRS and taxpayers maximum lead time to prepare for these changes.

CONCLUSION

Chairman Johnson, Ranking Member Carper and Members of the Committee, thank you again for the opportunity to update you on the work the IRS has done and continues to do to implement the tax-related provisions of the ACA. This concludes my statement, and I would be happy to take your questions.