

Area of  
Focus #3**The IRS's Administration of the Affordable Care Act Has Gone Well Overall, But Some Glitches Have Arisen****TAXPAYER RIGHTS IMPACTED<sup>1</sup>**

- *The right to be informed*
- *The right to quality service*
- *The right to pay no more than the correct amount of tax*
- *The right to finality*

Overall, the IRS has done a commendable job of implementing the first stages of the Patient Protection and Affordable Care Act of 2009 (ACA), including developing or updating information technology systems, issuing guidance, and collaborating with other federal agencies.<sup>2</sup> The IRS's implementation of the law was rigorously tested during this filing season, with the introduction of the Individual Shared Responsibility Payment (ISRP)<sup>3</sup> and the Premium Tax Credit (PTC)<sup>4</sup> on tax year (TY) 2014 federal returns. At the same time, the IRS received and processed a significant number of new information returns from insurers and exchanges.<sup>5</sup> The level of service (LOS) on the ACA telephone hotline (800-919-0452) was about 68 percent during the filing season, which far exceeded the 37 percent overall LOS on the Accounts Management (AM) toll-free lines.<sup>6</sup> The Filing Season Review section of this report provides preliminary high level IRS data related to the PTC, ISRP, and LOS on the ACA telephone hotline during the 2015 Filing Season.<sup>7</sup> However, as the filing season unfolded, we identified the issues detailed below.

1 See IRS, Taxpayer Bill of Rights, *available at* <http://www.irs.gov/Taxpayer-Bill-of-Rights>.

2 Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

3 Internal Revenue Code (IRC) § 5000A. Taxpayers filing TY 2014 federal income tax returns were required to report they have "minimum essential coverage" or were exempt from the responsibility to have the required coverage. If the taxpayer did not have coverage and was not exempt, he or she was required to make an ISRP when filing a return.

4 PTC is a refundable tax credit paid either in advance or at return filing to help taxpayers with low to moderate income purchase health insurance through the exchange. IRC § 36B. The amount of the credit paid in advance is based on projected household income and family size for the year of coverage, while the amount a taxpayer is actually eligible for is based on actual household income and family size for the year reflected on the tax return. Taxpayers were required to reconcile the credit amount they received in advance with the PTC to which they were actually entitled.

5 The Health Insurance Marketplace, also called the "Exchange," is a state or federally operated program where individuals can buy health care coverage. Coverage is available to people who are uninsured or who buy insurance on their own. See <http://www.irs.gov/uac/Newsroom/The-Health-Insurance-Marketplace>. IRC § 6055 and the regulations thereunder require every person (*i.e.*, health insurance issuers, self-insuring employers, government agencies, and other providers of health coverage) that provides minimum essential coverage (as defined in section 5000A(f)) to an individual to report to the IRS information about the coverage of each individual covered under the policy. Section 6056 requires annual information reporting by applicable large employers relating to the health insurance that the employer offers (or does not offer) to its full-time employees. Notice 2013-45, 2013-31 I.R.B. 116 (July 29, 2013) provides transition relief by delaying the information reporting required under IRC §§ 6055 and 6056 until 2016 for coverage in 2015, but the IRS has encouraged entities to voluntarily provide information returns for coverage provided in 2014, which was due to be filed and furnished in early 2015.

6 As described above, the AM LOS of approximately 37 percent is a combined figure reflecting 29 customer service lines. The higher LOS on the ACA line may be due, at least in part, to the fact that the number of calls to the ACA line was significantly lower than the IRS anticipated. The ACA line received about 567,000 attempted calls, as compared with almost 50 million on the AM lines overall during the period. IRS, Joint Operations Center (JOC), *Product Detail Report* (week ending Apr. 18, 2015); IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 18, 2015).

7 See *Filing Season Review*, *supra*.

### IRS Implementation Efforts Were Tested During Filing Season 2015

Eligible individual taxpayers claimed the PTC for the first time on TY 2014 returns filed during the 2015 filing season. The following figure provides information regarding the extent to which individual taxpayers claimed the PTC on their TY 2014 returns.

**FIGURE 3.3.1, Reporting of the Premium Tax Credit on Forms 8962 for TY 2014 Returns Through April 30, 2015<sup>8</sup>**

Returns Filed with Forms 8962, <i>Premium Tax Credit (PTC)</i>	2.6 million
Total PTC Amount Claimed	\$7.7 billion
Average PTC Amount Claimed Per Return	\$3,000
Returns Reporting Advanced PTC	2.4 million (93% of returns with Forms 8962)
Total Advanced PTC Reported	\$8.7 billion
Prepared Returns Filed with Forms 8962 (Paid or Volunteer)	1.6 million

Individual taxpayers who did not have minimum essential coverage or qualify for an exemption were required to make an ISRP on their TY 2014 returns. The following table provides data on the reporting of ISRPs on TY 2014 returns.

<sup>8</sup> Wage & Investment Research and Analysis (WIRA), *ACA Fact Sheet 5/21/2015* (returns processed through April 2015). This data is based on amounts claimed on returns that had posted as of the end of April 2015 and is preliminary and subject to change as the IRS reviews the data, processes additional TY 2014 returns, and conducts compliance activities. Note that the number of “Returns Reporting Advanced PTC” is a subset of the number of “Returns with Forms 8962, *Premium Tax Credit (PTC)*.” All taxpayers claiming the PTC were required to file a Form 8962. Of those taxpayers who have filed thus far, about 93 percent claimed the Advanced PTC (APTC), while about seven percent waited to claim the PTC until they filed their return. However, not all APTC recipients have filed returns and reconciled their credit amount. Therefore, it is difficult to compare the “Total Advanced PTC Reported” (about \$8.7 billion) to the “Total PTC Amount Claimed.” The difference of roughly \$1 billion is probably attributable, at least in part, to some taxpayers having reported receiving more in Advanced PTC during the year than they ultimately claimed. Of the 2.6 million returns filed with Forms 8962, about 1.6 million returns were prepared by a paid or volunteer preparer and about one million were deemed self-prepared.

**FIGURE 3.3.2, Reporting of the Individual Shared Responsibility Payments on TY 2014 Returns Through April 30, 2015<sup>9</sup>**

Returns Claiming Coverage	94 million
Returns with ISRP	6.6 million
Average ISRP per Return Reporting ISRP	\$190
Prepared Returns Reporting ISRP (Paid or Volunteer)	4.3 million
Returns Filed with Forms 8965, <i>Health Coverage Exemptions</i>	10.7 million
Returns Filed with Forms 8965 Claiming the Household Coverage Exemption (checked yes in Form 8965 Part II 7a or 7b or both)	3.2 million
Returns Filed with Forms 8965 Claiming Coverage Exemption (Part III)	7.5 million
Prepared Returns Filed with Forms 8965 (Paid or Volunteer)	5.7 million (53% of returns with Form 8965)

### Taxpayers Who Have Not Filed Returns by August Will Have Difficulties Receiving Advanced Premium Tax Credit

The regulations that accompany the ACA include a process for re-enrolling taxpayers in health insurance and redetermining their eligibility for the APTC.<sup>10</sup> As part of that process, in August the IRS will share with the exchanges a list of taxpayers who received the APTC but have not yet filed a tax return with the IRS. For all taxpayers who previously received the APTC and already filed their tax returns by the end of August, the exchanges will automatically re-enroll the taxpayers and recalculate their 2016 APTC amount during the fall of 2015. Taxpayers who failed to file a tax return by the end of August will be re-enrolled in their insurance for 2016; however, they will not receive the APTC.<sup>11</sup> To receive the APTC, taxpayers will have to file their 2014 tax return and then go back to the Marketplace for a redetermination of their eligibility for the APTC. This creates an extra burden on taxpayers to reestablish their eligibility for the advanced credit.

The IRS has begun sending newly-developed Letter 5591 to APTC recipients who have yet to file tax returns or extensions. The letter urges the recipient to file as soon as possible to avoid a gap in receiving 2016 APTC.<sup>12</sup> Unfortunately, TAS was not given the opportunity to review the letter prior to its use. We are concerned that the letter does not adequately warn taxpayers that they need to file returns by the end of August to avoid a cumbersome process to continue receiving APTC. The letter also fails to specifically tell taxpayers that if they do not file and reconcile their APTC, they will have to undergo additional steps to receive the APTC for 2016. Aside from the letter distribution, we will monitor the IRS communications strategy to educate taxpayers to file by the end of August to continue receiving APTC.

9 WIRA, *ACA Fact Sheet 5/21/2015* (returns processed through April 2015). This data is based on amounts claimed on returns that had posted as of the end of April 2015 and is preliminary and subject to change as the IRS reviews the data, processes additional TY 2014 returns, and conducts compliance activities. Note that there were about 6.6 million returns reporting an ISRP. Of those, about 4.3 million were submitted on returns prepared by a paid or volunteer preparer and about 2.3 million were deemed self-prepared. Taxpayers also filed about 10.7 million returns claiming an exemption from the ISRP using Form 8965, *Health Coverage Exemptions*. Of those, about 53 percent were prepared by a paid or volunteer preparer and about 47 percent were deemed self-prepared. Taxpayers who report an ISRP may or may not file Form 8965. The roughly 10.7 million returns claiming an exemption on Form 8965 were divided between about 7.5 million claiming a Part III coverage exemption for individuals and about 3.2 million claiming a Part II coverage exemption for households (although some taxpayers claimed an exemption in both Part II and Part III).

10 45 CFR 155.335, Annual eligibility redetermination; Department of Health and Human Services, *Guidance on Annual Eligibility Redeterminations and Re-enrollments for Marketplace Coverage for 2016* (Apr. 22, 2015) available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/annual-redeterminations-for-coverage-42215.pdf>.

11 *Id.*

12 IRS, ACA Executive Steering Committee Meeting Notes (June 23, 2015).

### A Significant Number of Taxpayers Overpaid the Individual Shared Responsibility Payment

As discussed in the Filing Season Review section of this report, WIRA and TAS Research have identified more than 300,000 taxpayers who overpaid their ISRP, totaling about \$35 million through April 30, 2015.<sup>13</sup> Most of these taxpayers did not owe an ISRP because they were eligible for an exemption as a result of their low income.<sup>14</sup> The average ISRP overstatement amount was a little over \$110 per return.<sup>15</sup> The IRS Office of Chief Counsel has advised the IRS has the legal authority to return the overpaid portions of the ISRP. Therefore, the IRS must make a policy call about what procedures it will require taxpayers to follow to obtain their refunds.<sup>16</sup> We are mindful that the IRS is operating in a low budget environment and has limited resources to develop procedures to return these funds in a proactive manner. As this report goes to print, it is our understanding that the IRS is still considering options, but has indicated that it will likely send soft notices to impacted taxpayers. As the IRS weighs the different options, the National Taxpayer Advocate raises the following concerns:

- For taxpayers who overpaid ISRP on balance due returns, the IRS should put a collection hold on the associated accounts to enable the IRS to make the appropriate adjustments before taking any improper collection actions; and
- Because the average overpayment was approximately \$110, we are concerned many impacted taxpayers will not take the initiative to file a claim for a refund of the excess ISRP because it may not make sense to incur costly tax return preparation fees.<sup>17</sup> We believe the IRS should proactively adjust the impacted accounts and return overpayments to the taxpayers, where appropriate, without requiring the taxpayers to request such payment.<sup>18</sup> While the IRS could also send out a letter or soft notice to the affected taxpayers and include a partially

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13 WIRA and TAS Research analysis on ISRP Overstatements through April 30, 2015, on file with TAS Research. The IRS and TAS cannot calculate the exact amount of ISRP overpayments until all dependents have filed their TY 2014 tax returns because the amount of the ISRP depends on household income pursuant to IRC § 5000A(c).

14 Nearly 250,000 of these taxpayers were eligible for an ISRP exemption. These taxpayers paid in over \$27 million in ISRP. In addition, more than 50,000 taxpayers paid a total of nearly \$8 million because the ISRP amount was miscalculated. These amounts include returns processed by the IRS through the end of April 2015. WIRA and TAS Research estimates from the Individual Returns Transaction File on the IRS Compliance Data Warehouse. This data is preliminary and is subject to change as the IRS reviews the data, processes additional TY 2014 returns, and conducts compliance activities.

15 This average only includes returns with an ISRP overstatement.

16 Meeting between the Office of Chief Counsel and TAS (June 3, 2015), and e-mail summary provided to TAS from the Office of Chief Counsel (June 19, 2015).

17 WIRA and TAS Research analysis on ISRP Overstatements through April 30, 2015, on file with TAS Research.

18 If possible, the checks should include language to explain what the funds represent. We understand that any letter or language provided to taxpayers, regardless of the explanation contained therein, may increase the call volume for the IRS.

pre-filled response form to allow taxpayers to claim a refund,<sup>19</sup> that process is extremely burdensome for taxpayers and the IRS, particularly when the IRS can make the adjustment on its own without the need for taxpayers to respond. By placing the burden on taxpayers, some taxpayers may not respond and will end up paying more tax than they owe.

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**Because the average overpayment was approximately \$110, we are concerned many impacted taxpayers will not take the initiative to claim a refund of the excess ISRP because it may not make sense to incur costly tax return preparation fees.**

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### TAS Tested Free File Programs to Evaluate ISRP Calculation Accuracy

Based on unusual trends on returns with self-assessed ISRPs,<sup>20</sup> as well as several submissions to the Systemic Advocacy Management System (SAMS) questioning return preparation software accuracy with ACA-related issues,<sup>21</sup> TAS tested the 14 Free File sites accessible through the official IRS website.<sup>22</sup> The IRS website directs taxpayers to use Free File to ensure they are complying with ACA requirements.<sup>23</sup> To determine the experience of taxpayers and find out if the Free File programs accurately calculate the ISRP and determine exemption<sup>24</sup> eligibility, we created the scenarios described below and tested them on each of the 14 Free File sites.

- Scenario 1 (“the under the filing threshold” scenario): Taxpayer 1, single with no dependents, had no health care coverage throughout the entire 2014 TY. He earns \$10,000 in wages at his job with no additional income and claims the standard

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- 19 This partially pre-filled response form would constitute an informal claim for refund, if timely signed and returned to the IRS. An “informal claim” is a request for refund submitted by the taxpayer either on a non-standard form (written request) or by some other means as long as the required claim elements are identified. These elements include TY, identification number, refund requested, and reason for the refund. The Supreme Court has embraced this concept. See *United States v. Kales*, 314 U.S. 186 (1941). See also *United States v. Memphis Cotton Oil Co.*, 288 U.S. 62 (1933). For example, a letter from the taxpayer can be an informal claim. IRM 4.90.7.1(4)(b), *Overview* (May 9, 2013). See also *Newton v. United States*, 163 F. Supp. 614 (Ct. Cl. 1958) (written protest as an informal claim). By submitting a timely informal claim for refund, the taxpayer would be protected against the expiration of the refund statute of limitations. IRC § 6511. For example, if the taxpayer does not submit an informal claim for refund but merely calls the IRS and requests the IRS to return the excess ISRP and the refund statute runs before the taxpayer realizes the IRS didn’t send the correct amount, the taxpayer has no remedy; the phone call would not be a claim for purposes of IRC § 7422, and thus the taxpayer could not have a U.S. District Court or the U.S. Court of Federal Claims decide the merits of his or her refund claim.
- 20 The IRS ACA Joint Implementation Team on Collection conducted a preliminary study of 100 cases to determine if the ISRP was being reported and calculated correctly. The team selected cases with self-reported ISRP, but the cases were not selected from a random sample. The analysis was preliminary but found ISRP misreporting trends that warranted additional analysis. The initial review produced concerns about whether the problems resulted from software issues. Approximately 50 percent of returns with all misreported ISRP were prepared by tax return preparers. TAS notes from the February 26, 2015 and March 9, 2015 IRS Collection ACA Joint Implementation Team meetings. Based on these initial findings, TAS decided to test the Free File software programs for problems in reporting and calculating the ISRP.
- 21 TAS received submissions regarding either return preparers not considering possible ISRP exemptions for the taxpayer or software adding the ISRP when it appears the taxpayer is eligible for a coverage exemption. SAMS submissions 32208, 32583, and 32706.
- 22 Free File provides taxpayers with free commercial tax return software or fillable form options. For 2015, anyone who had income of \$60,000 or less is eligible for the free tax software. For people who made more than \$60,000, the Free File Alliance provides Free File Fillable Forms, the electronic version of IRS paper forms. Free File also provides free requests for extensions of time to file, with no income limitations. IRS News Release, *IRS and Free File Alliance Reach New Agreement for Free Tax Software*, IR-2015-52 (Mar. 17, 2015). We decided to test Free File programs for two reasons: (1) the programs are free of charge while performing the tests, and (2) the programs are similar to the related products commercially available through the vendors. See 2015 Free On-Line Electronic Tax Filing Agreement Amendment (Mar. 6, 2015), available at [http://www.irs.gov/pub/irs-utl/filing\\_agreement\\_2015.pdf](http://www.irs.gov/pub/irs-utl/filing_agreement_2015.pdf) (last visited June 23, 2015).
- 23 IRS, *The Health Care Law and Your Taxes*, available at <http://www.irs.gov/pub/irs-pdf/p5201.pdf> (last visited June 23, 2015).
- 24 For more information about the various coverage exemptions available for 2014, see the chart in the Instructions to Form 8965, *Health Coverage Exemptions*.

deduction. This scenario was designed to determine how easy it is for taxpayers to claim the ISRP exemption for income under the threshold for filing a tax return.<sup>25</sup>

- *Scenario 2 (“the hardship exemption” scenario):* Taxpayer 2, single with no dependents, earns wages of \$36,000 with no additional income and claims the standard deduction. Taxpayer 2 had no health care coverage in TY 2014 and filed for a hardship exemption with the exchange, which is still pending at the time of filing. This scenario was designed to determine the difficulty of reporting an exchange-granted ISRP exemption when the exemption certificate number is still pending.
- *Scenario 3: (“the one spouse with insurance, the other spouse without” scenario):* Taxpayer 3 is married with no dependents and had health care coverage for the entire year, but his spouse had no coverage for the entire year. Their filing status is married filing jointly, with combined wage income of \$56,000. They will claim the standard deduction. This scenario was designed to determine if the software clearly explained how to calculate the ISRP when one spouse does not have coverage.

### Results of the Free File Testing Produced A Few Concerns

For the most part, our tests of the Free File programs produced positive results. All but one program, discussed in more detail below, calculated the correct ISRP amount due from the taxpayer. In general, most programs were user-friendly and clearly guided the testers to understand how to calculate the ISRP or claim the appropriate exemption. Some interesting findings are:<sup>26</sup>

- *Automatic Exemption with No Explanation.* In four programs, the software automatically and correctly calculated no ISRP due in Scenario 1, but never informed the taxpayer he qualified for the exemption for income under the filing threshold. Thus, an educational component was missing, which might lead to compliance issues in future years, if the taxpayer’s income increased.
- *Incorrect ISRP Calculation Because Form 8965 Not Supported.* One program did not seem to support IRS Form 8965, *Health Coverage Exemptions*. The program did not provide the appropriate prompts to take the hardship exemption and incorrectly calculated a \$259 ISRP for Scenario 2.
- *Inadequate Guidance.* For Scenario 2, three programs assumed the user already knew about the available exemptions and did not provide sufficient guidance. For example, two programs required the user to locate and complete Form 8965 with minimal guidance to claim the hardship exemption. A third program provided a list of exemptions with no further explanations.

TAS reported detailed findings of the tests to the IRS Affordable Care Act Office as well as to Wage & Investment (W&I) Customer Account Services (CAS) to enable the IRS to discuss the results with the impacted software providers in an effort to correct any problems before the next filing season.<sup>27</sup> It is our understanding that the IRS coordinated with the Free File Alliance to address issues found in our tests. At the time this report went to print, we are pleased to report the software provider associated with the incorrect ISRP calculation above already adjusted the program to avoid similar errors in the future.<sup>28</sup> We intend to follow up to determine if further changes were made by the impacted software providers to provide more necessary guidance to the software users.

25 For a single taxpayer under age 65 at the end of 2014, a return is required if gross income was at least \$10,150. IRS Form 1040 Instructions 2014 at 7, Chart A.

26 Detailed observations of the software tests are on file with TAS. Conference call between TAS, ACA Program Office, and W&I CAS to Discuss Free File Test Results (June 18, 2015).

27 *Id.*

28 Email from W&I, CAS to TAS (June 29, 2015).

### Taxpayers May Have Received First-Time Penalty Abatement Relief Rather Than Appropriate Penalty Relief Under Notice 2015-9

We applaud the IRS for providing some relief for taxpayers who have balances due on their 2014 returns after reconciling APTC against the PTC allowed on the return. Under Notice 2015-9, the IRS will abate the penalty under IRC § 6651(a)(2) for taxable year 2014 for late payment of a balance due.<sup>29</sup> However, we are concerned some taxpayers may have received penalty relief for late payment under IRC § 6651(a)(2) under the first-time abatement administrative waiver, which is available only once every three years, rather than the relief provided under the Notice.<sup>30</sup> This means some taxpayers who otherwise would qualify for penalty relief during the next three years may not receive it. Our office will investigate this matter to determine the extent to which taxpayers received the inappropriate type of penalty relief, and work with the IRS to reclassify the reason for the penalty abatement.

### Lack of Data Caused IRS to Suspend Processing Premium Tax Credit Returns

On February 25, 2015, the IRS alerted employees it needed to match the PTC claimed on returns against third-party data provided by the Department of Health and Human Services. Pending receipt of such data, the IRS suspended the processing of returns it was unable to match. The alert advised employees to tell taxpayers calling about these returns to allow an additional 45 days for processing and review.<sup>31</sup> The IRS updated the alert on March 6, directing employees to tell taxpayers whose refunds have not been issued within 21 days of electronically filing that their returns were under a review that might take an additional 45 days.<sup>32</sup> However, we are concerned the IRS held returns and looked solely to electronic data matching before releasing refunds, ignoring paper documentation that supported the taxpayers' claims, and thereby harming taxpayers.

### Exchanges Made Errors on Forms 1095-A, Leading to an IRS Resolution to Reduce Taxpayer Burden

The Centers for Medicare and Medicaid Services (CMS) announced in February 2015, that about 20 percent – or 800,000 – of the tax return filers who purchased health insurance from the federal exchange received Forms 1095-A, *Health Insurance Marketplace Statement*, with errors in the second lowest cost silver plan information. The exchange issued corrected Forms 1095-A. In response, CMS asked taxpayers who (1) received an incorrect Form 1095-A from either the federal or state exchanges and (2) had not yet filed their 2014 tax returns, to wait for corrected forms before filing.<sup>33</sup> Treasury informed taxpayers who had already filed based on the incorrect forms they did not need to file amended returns.<sup>34</sup> Treasury

29 Notice 2015-9, 2015-6 I.R.B. 590 (Feb. 9, 2015).

30 First-time abatement applies if the taxpayer does not have a failure to pay, failure to file, or failure to deposit penalty in the prior three years of the assessment year. For more information on the first-time abatement administrative waiver, see IRM 20.1.1.3.6.1, *First Time Abate (FTA)* (Aug. 5, 2014).

31 IRS, Servicewide Electronic Research Program (SERP) Alert 15A0141, *Returns Reporting a Premium Tax Credit Being Held in Error Resolution System (ERS) Suspense* (Feb. 25, 2015). SAMS Submission 32474 (complaint about delay in processing).

32 SERP Alert 15A0171, *Taxpayer Refund Inquiries with ERS Status Code 249, 349, or 449* (Mar. 6, 2015).

33 CMS, *What Consumers Need to Know About Corrected Form 1095-As* (Feb. 20, 2015) available at <http://blog.cms.gov/2015/02/20/what-consumers-need-to-know-about-corrected-form-1095-as/>.

34 U.S. Department of Treasury, Press Center, *Statement from a Treasury Spokesperson on CMS Announcement Last Week About 1095-A* (Feb. 24, 2015) and *Statement from a Treasury Spokesperson on Forms 1095-A* (Mar. 20, 2015), available at <http://www.treasury.gov/press-center/press-releases/Pages/jl9981.aspx> and <http://www.treasury.gov/press-center/press-releases/Pages/jl10005.aspx>, respectively.

further stated the IRS would not pursue collection of any additional taxes based on the updated information in the corrected forms.<sup>35</sup>

The IRS later advised employees to extend this relief to all taxpayers who received incorrect Forms 1095-A, not just those who had previously filed.<sup>36</sup> On April 10, 2015, the IRS issued Notice 2015-30, providing penalty relief for incorrect or delayed Forms 1095-A for taxpayers who timely filed their 2014 return.<sup>37</sup> However, we remain concerned about the impact the corrected forms had on taxpayers. For example, some may be eligible for a refund but will not amend their returns because they do not understand the meaning of the corrected Form 1095-A, are afraid of being audited, or cannot afford the additional tax return preparation fees involved in amending the return.

### Systemic Advocacy Management System ACA Submissions

TAS has received 69 SAMS submissions with ACA issues through June 12, 2015.<sup>38</sup> TAS created an ACA Rapid Response Team to quickly address any significant ACA issues elevated through SAMS or case receipts. In addition to the issues raised above, we received SAMS submissions on the following issues:

- The Vermont state exchange portal was down for approximately two months during open enrollment and the exchange delayed processing change-in-circumstances submissions;<sup>39</sup>
- Unscrupulous preparers improperly calculated the ISRP and instructed the taxpayers to pay the ISRP amounts directly to the preparers;<sup>40</sup>
- Preparers did not properly claim ISRP exemptions for noncitizen taxpayers;<sup>41</sup>
- The preparer altered the return by incorrectly adding PTC without the taxpayer's knowledge and pocketed the incremental amount;<sup>42</sup>

35 U.S. Department of Treasury, Press Center, *Statement from a Treasury Spokesperson on CMS Announcement Last Week About 1095-A* (Feb. 24, 2015) and *Statement from a Treasury Spokesperson on Forms 1095-A* (Mar. 20, 2015), available at <http://www.treasury.gov/press-center/press-releases/Pages/jl9981.aspx> and <http://www.treasury.gov/press-center/press-releases/Pages/jl10005.aspx>, respectively. See also Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2015-43-043, *Affordable Care Act: Assessment of Internal Revenue Service Preparation for Processing Premium Tax Credit Claims 12* (May 11, 2015) (TIGTA urges the IRS to develop a tool to enable taxpayers to determine the correct second lowest cost silver plan premium).

36 SERP Alert 15A0147, *Responding to Taxpayer Inquiries about Corrected Forms 1095-A, Health Insurance Marketplace Statements* (Feb. 26, 2015, revised Apr. 6, 2015).

37 Notice 2015-30, 2015-17 I.R.B. 928 (Apr. 27, 2015).

38 SAMS, as of June 12, 2015.

39 The Vermont state exchange was not able to timely process changes in circumstances. Although taxpayers notified the exchange of their change in circumstances in a timely manner, impacted taxpayers had to repay excess advance PTC. The exchange was also not available for a certain period of time during open enrollment. A senator's aide elevated a SAMS recommendation for a new coverage exemption for Vermont residents who were not able to enroll in health care coverage after making attempts during the enrollment period. TAS researched and learned the Vermont Exchange portal was down between September 16 and November 15, 2014. However, residents could still enroll through the phone and paper. SAMS Submissions 32377, 32577, 32647, and 32382.

40 TAS received information from the National Immigration Law Center (see <http://www.nilc.org/>) and Low Income Taxpayer Clinics (see IRC § 7526) that some return preparers are having taxpayers who are not lawfully present, and therefore not responsible for the ISRP, pay the ISRP directly to the preparer. The IRS issued a Tax Tip reminding taxpayers to report unscrupulous return preparers. IRS Health Care Tax Tip 2015-17, *Affordable Care Act Consumer Alert: Choose Your Tax Preparer Wisely* (Mar. 13, 2015). The Tax Tip included a link to Form 14157, *Complaint: Tax Return Preparer*. In addition, the TAS Low Income Taxpayer Clinic Program Office Director issued an alert to the clinics on this topic. SAMS Submissions 32658 and 32612.

41 In some instances, return preparers were adding the ISRP on noncitizen returns instead of properly completing Form 8965, *Health Coverage Exemptions*, to claim a coverage exemption. The IRS issued a Tax Tip stating that taxpayers not lawfully present are exempt from the individual shared responsibility provision and do not need to make a payment. IRS Health Care Tax Tip 2015-17, *Affordable Care Act Consumer Alert: Choose Your Tax Preparer Wisely* (March 13, 2015). SAMS Submission 32658.

42 SAMS Submission 32605.



- An IRS programming issue caused taxpayers' refunds to not properly offset ISRP balances, resulting in the issuance of a refund to the taxpayer and a balance due for the taxpayer for the same tax year;<sup>43</sup>
- The final version of IRS Publication 974, *Premium Tax Credit*, was not available until the end of February;<sup>44</sup> and
- An IRS programming issue caused taxpayers' entire refundable credit to incorrectly offset to a smaller ISRP.<sup>45</sup>

### TAS ACA Case Receipts

Through May 31, 2015, TAS received 2,577 ACA case receipts, closed 1,658 ACA cases, and provided relief in almost 78 percent of those cases, with resolution taking an average of about 30 days.<sup>46</sup> Overall:

- Almost 84 percent of the taxpayers who came to TAS with ACA problems were experiencing an economic burden;
- In 91 percent of the ACA cases, the taxpayer was experiencing a problem with the PTC;
- About 48 percent of the PTC cases were related to processing the return in the Submission Processing Error Resolution unit;<sup>47</sup> and
- Almost seven percent of the total ACA case receipts involved a problem with the ISRP.<sup>48</sup>

Most of the taxpayers contacted TAS because their returns and refunds were delayed due to problems with:

- Matching third-party data on returns claiming the PTC;
- The return not including a correct Form 8962, *Premium Tax Credit (PTC)*, to reconcile the APTC; or
- Systemic issues offsetting the credit to the ISRP balance.

In the PTC cases, the returns were in the Submission Processing Error Resolution/Reject unit waiting for the IRS to request more information from the taxpayer, or waiting for a response where the IRS asked for

43 TAS received two submissions on this IRS programming issue, identified by the IRS in February, 2015. SAMS Submissions 32672 and 32311.

44 While the IRS referred taxpayers to this publication for help preparing Form 8962, *Premium Tax Credit*, the final version of it was not available until February 27, 2015. As an interim measure, the IRS posted draft worksheets on [www.irs.gov](http://www.irs.gov) prior to the availability of the final Publication 974. SAMS Submissions 32296 and 32147.

45 TAS received several SAMS submissions identifying an IRS programming issue in which the entire amount of refundable credit from taxpayers' individual (Masterfile Tax (MFT) 30) account was offset to the ISRP account, even though the ISRP was much less than the refund. In each case, the taxpayers' refunds were delayed as they were scheduled to offset to the ISRP. Programmers were aware of the problem, scheduled a recovery fix, and the issue was resolved in a week. As the IRS worked to fix this issue, some taxpayers experiencing economic hardships faced additional burdens because of delays in receiving refunds. In addition, even after the fix, holds or freezes were placed on some accounts. SAMS Submissions 32746, 32747, 32761, 32766, 32769, 32773, 32758, 32781, and 32782.

46 Data obtained from Business Performance Management System (BPMS) (run date June 1, 2015).

47 Data obtained from the Taxpayer Advocate Management Information System (TAMIS) (June 17, 2015). TAS uses issue code 315 to identify cases in the Submission Processing Error Resolution unit.

48 Data obtained from BPMS (run date June 1, 2015).

the information before the taxpayer came to TAS.<sup>49</sup> If the Submission Processing unit could not resolve the discrepancy, the IRS continued processing the return but froze the refund to determine whether the return met compliance conditions before releasing all or part of the refund.

Taxpayers reporting an ISRP had their refunds put on hold until the IRS completed an additional review. As a protection, the IRS placed a freeze on the refund without offsetting the ISRP amount to the ISRP account.<sup>50</sup> However, after the IRS completed the review and released the refund, one of two systemic problems occurred:

- A credit did not offset to pay the ISRP balance. This caused taxpayer burden by requiring the taxpayer to repay the ISRP originally reported on the return, instead of the IRS taking the ISRP into account when computing the amount of refund; or
- A programming error caused the entire overpayment to offset to the ISRP balance, thereby creating a credit on the ISRP account. The IRS scheduled a period to recover the credit on the affected accounts. However, because of the potential for a duplicate or erroneous refund, the recovery process prevented TAS from issuing a manual refund to taxpayers experiencing an economic burden.

### FOCUS FOR FISCAL YEAR 2016

- Train TAS employees on ACA collection activities, the Employer Shared Responsibility Provision, and provide advocacy tips on working ACA cases;
- Continue to participate on the IRS Joint Implementation Teams and the Executive Steering Committee; and
- Identify systemic issues associated with the ACA, elevate issues to the TAS ACA Rapid Response Team, and work with the IRS to resolve them.

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49 When discrepancies and calculation errors existed, or if the taxpayer did not attach Form 8962 to the return, the IRS corresponded with the taxpayer using Letter 12C (*Individual Return Incomplete for Processing: Forms 1040, 1040A or 1040EZ*) to obtain information before continuing to process the return.

50 During original processing of the tax return, the IRS assesses the ISRP amount on the new MFT 35 account and systemically offsets it with an equal amount from the refund shown on the MFT 30 account, if any.