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NINA E. OLSON: A LEGISLATIVE LEGACY

Danshera Wetherington Cords



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NINA E. OLSON: A LEGISLATIVE LEGACY

*Danshera Wetherington Cords**

I. INTRODUCTION

It is exciting to have the opportunity to reflect on Nina E. Olson's time as the National Taxpayer Advocate (NTA). In the eighteen years she served as the NTA, she inspired many of my students to consider careers in tax and social justice. She inspires me; I always look forward to seeing her at conferences and working on projects in which she is involved.¹ Those conferences and projects are always energizing. Her service has made the tax

* Professor of Law, Albany Law School. Nina E. Olson has been an inspiration as an advocate, a leader, and a role model for women in practice during her time as NTA. Thank you to Connor Brown, J.D. Candidate 2021, Albany Law School, for his research assistance in preparation of this introduction. Thank you also to Professor Tony Infanti and the *Pittsburgh Tax Review* for their kind support in hosting this symposium to honor the tireless work Nina Olson has done throughout her career. Albany Law School has provided tremendous support for this work. Any omissions are my own.

¹ One of these programs was *Taxpayer Advocacy: Addressing Systemic Tensions During Tight Budget Times*. See Paul Caron, *Albany Hosts Conference Today on Taxpayer Advocacy and Revenue Collection*, TAXPROF BLOG (Oct. 8, 2010), https://taxprof.typepad.com/taxprof_blog/2010/10/albany-hosts.html. The program discussed the tensions between state tax collectors and taxpayer rights activists, including state and local taxpayer advocates, tax practitioners, tax clinics, and academics. The Albany Law School Clinic & Justice Center's Low-Income Taxpayer Clinic and the Government Law Center hosted the program, which focused on systemic advocacy in the wake of state budget problems following the 2008 economic crisis. My former colleague, Deborah Kearns, organized the event. At the time, she was an assistant clinical professor and the Director of the Albany Law School Clinic and Justice Center's Low-Income Taxpayer Clinic. The impetus for the event was Professor Kearns's desire to expand the resources available for taxpayers at the state level because of what her clinic's clients were experiencing. She was frustrated that it was often even more challenging to resolve state tax issues because the states often provide taxpayers fewer administrative and judicial rights and there are even fewer resources available to low-income taxpayers at the state level. See generally Diana L. Leyden, *Nina's Leadership as a Servant Leader and Her Impact on States' Taxpayer Rights*, 18 PITT. TAX REV. 109 (2020). Professor Kearns's clients were facing great hardships with State of New York taxes, and she expressed an interest in hosting a program for state taxpayer rights advocates. I suggested that Professor Kearns ask Nina to be the keynote speaker to make it a national conversation. Of course, Nina was not only willing to give a keynote address, but she also offered Professor Kearns assistance with contacts and other content. It was the first national conference of its kind. Nina's assistance made the program that much more successful.

law better, improved the lives of millions of taxpayers,² and her retirement from the office of the NTA leaves a legacy of accomplishments to celebrate.

The other authors in this issue have discussed many aspects of her activities while serving as NTA. Congress charged the office with improving tax administration. Although the most important work Olson did during her service as NTA was on behalf of low-income and other under- and unrepresented taxpayers, it is not the only significant work she did as NTA.³

Throughout her service as NTA, Olson embraced the entire charge with enthusiasm. While she recognized that some taxpayers could more easily make their voices heard, she used every tool available in the NTA arsenal to improve the whole system, aiding those with their own bullhorns such as the Internal Revenue Service (IRS) and wealthier taxpayers just as she aided those without a bullhorn. Much of her work has been dedicated to the principle that the tax system must operate efficiently, which was not always at cross purposes to the IRS's tax collection mission. Indeed, as NTA, much of her work was directed toward improving compliance.⁴

² See generally NAT'L TAXPAYER ADVOC., 2019 ANNUAL REPORT TO CONGRESS, at vi (2019) (between October 1, 2001, and October 1, 2019, TAS worked more than 4.4 million cases).

³ See, e.g., T. Keith Fogg, *Taxation with Representation: The Creation and Development of Low-Income Taxpayer Clinics*, 67 TAX LAW. 3 (2013) (discussing Olson's role as NTA in the expansion of low-income taxpayer clinics); Francine Lipman, *Access to Tax Justice*, 40 PEPP. L. REV. 1173 (2013) (discussing the role of the EITC as an antipoverty measure and the research and advocacy of the NTA in its expansion).

⁴ See, e.g., *A Study of the IRS Offer in Compromise Program for Business Taxpayers*, 2 NAT'L TAXPAYER ADVOC., 2018 ANNUAL REPORT TO CONGRESS, at 131 (2019) [hereinafter 2018 ANNUAL REPORT]; *Further Analyses of "Federal Tax Liens and Letters: Effectiveness of the Notice of Federal Tax Liens and Alternative IRS Letters on Individual Tax Debt Resolution,"* *id.* at 157; *Study of Financial Circumstances of Taxpayers Who Entered Into Installment Agreements and Made Payments While Their Debts Were Assigned to Private Collection Agencies*, 2 NAT'L TAXPAYER ADVOC., 2017 ANNUAL REPORT TO CONGRESS, at 1 (2017); *A Study of the IRS Offer in Compromise Program*, *id.* at 41; *The Importance of Financial Analysis in Installment Agreements (IAs) in Minimizing Defaults and Preventing Future Payment Noncompliance*, 2 NAT'L TAXPAYER ADVOC., 2016 ANNUAL REPORT TO CONGRESS, at 53 (2016); *IRS Should Use Its Internal Data to Determine if Taxpayers Can Afford to Pay Their Tax Delinquencies*, *id.* at 67; *Collecting Business Debts: Issues for the IRS and Taxpayers*, *id.* at 81; *IRS Collectibility Curve*, 2 NAT'L TAXPAYER ADVOC., 2015 ANNUAL REPORT, at 33 (2015); *Audit Impact Study*, *id.* at 67; *Estimating the Impact of Audits on the Subsequent Reporting Compliance of Small Business Taxpayers: Preliminary Results*, 2 NAT'L TAXPAYER ADVOC., 2014 ANNUAL REPORT TO CONGRESS, at 27 (2014) [hereinafter 2014 ANNUAL REPORT]; *Identity Theft Case Review Report: A Statistical Analysis of Identity Theft Cases Closed in June 2014*, *id.* at 43; *Do Accuracy-Related Penalties Improve Future Reporting Compliance by Schedule C Filers?*, 2 NAT'L TAXPAYER ADVOC., 2013 ANNUAL REPORT TO CONGRESS, at 1 (2013) [hereinafter 2013 ANNUAL REPORT]; *The IRS Private Debt*

Much of what is written in this symposium, and elsewhere, focuses on her advocacy on behalf of low-income taxpayers, particularly her work to improve the Earned Income Tax Credit (EITC) and low-income tax clinic funding. While these are among the most significant areas in which she concentrated her efforts, this essay will briefly examine her successful use of legislative recommendations in the NTA's annual report to Congress to improve tax administration and the legacy that she leaves for future NTAs. Specifically, this essay explores the impact her legislative recommendations have had on tax administration. It will focus on recommendations related to other initiatives, as they have received somewhat less attention. Her understanding that tax administration must be fair, including to the well-heeled and its enforcers, is what made her the ideal NTA.

This essay proceeds in three parts. In Part II, it briefly discusses the role of the NTA. Next, in Part III, it describes her use of the NTA's annual report to Congress and the legislative recommendations contained in the report to improve tax administration. Finally, in Part IV it concludes with a brief

Collection Program—A Comparison of Private Sector and IRS Collections While Working Private Collection Agency Inventory, *id.* at 97; *A Comparison of Revenue Officers and the Automated Collection System in Addressing Similar Employment Tax Delinquencies*, *id.* at 15; *Investigating the Impact of Liens on Taxpayer Liabilities and Payment Behavior*, 2 NAT'L TAXPAYER ADVOC., 2012 ANNUAL REPORT TO CONGRESS, at 105 (2012); *Research Prospectus: When Do Accuracy-Related Penalties Improve Future Reporting Compliance by Schedule C Filers?*, *id.* at 149; *Research Prospectus: Comparing the Effect of Revenue Officers and the Automated Collection System on Future Compliance*, *id.* at 141; *An Analysis of the IRS Examination Strategy: Suggestions to Maximize Compliance, Improve Credibility, and Respect Taxpayer Rights*, 2 NAT'L TAXPAYER ADVOC., 2011 ANNUAL REPORT TO CONGRESS, at 63 (2011) [hereinafter 2011 ANNUAL REPORT]; *Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued for Claimed Dependents*, *id.* at 113; *An Analysis of the IRS Collection Strategy: Suggestions to Increase Revenue, Improve Taxpayer Service, and Further the IRS Mission*, 2 NAT'L TAXPAYER ADVOC., 2010 ANNUAL REPORT TO CONGRESS, at 39 (2010); *Estimating the Impact of Liens on Taxpayer Compliance Behavior: An Ongoing Research Initiative*, *id.* at 89; *The IRS's Use of Notices of Federal Tax Lien (NFTL)*, 2 NAT'L TAXPAYER ADVOC., 2009 ANNUAL REPORT TO CONGRESS, at 1 (2009); *A Framework for Reforming the Penalty Regime*, 2 NAT'L TAXPAYER ADVOC., 2008 ANNUAL REPORT TO CONGRESS, at 1 (2008) [hereinafter 2008 ANNUAL REPORT]; *Effect of Tax Increase and Prevention Reconciliation Act of 2005 on IRS Offer in Compromise Program*, 2 NAT'L TAXPAYER ADVOC., 2007 ANNUAL REPORT TO CONGRESS, at 75 (2007) [hereinafter 2007 ANNUAL REPORT]. It is worth noting that, despite her regular advocacy for measures to improve compliance and provide adequate funding for the IRS, Olson did not always win friends at the IRS. However, this was the nature of her job. This is something that she readily acknowledged. *See, e.g.*, Laura Saunders, "My Role Is Not to Be a Shill for the IRS," WALL ST. J. (Aug. 2, 2019 5:30 AM), <https://www.wsj.com/articles/my-role-is-not-to-be-a-shill-for-the-irs-11564738204>.

explanation of the legacy of legislative success that Olson leaves behind for her successors.

II. THE NATIONAL TAXPAYER ADVOCATE

In 1997, the National Commission on Restructuring the Internal Revenue Service's report, *A Vision for a New IRS*, recommended a complete restructuring of the IRS and, in addition, recommended changes to the tax code to provide taxpayers with many more substantive and procedural rights while substantially increasing the independence of the National Taxpayer Advocate.⁵ The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) adopted many of these recommendations, including strengthening the independence of the NTA and the Taxpayer Advocate Service (TAS).⁶

The NTA is the taxpayer's voice at the IRS, charged with both micro and macro taxpayer advocacy. Local TAS offices are available to assist taxpayers when they encounter problems in their interactions with the IRS.⁷ The NTA is charged with systemic advocacy to improve tax administration overall.⁸

Although the NTA is part of the IRS, the NTA must operate with significant independence to effectively assist taxpayers. Before RRA 98, the NTA and TAS employees were generally on temporary assignments, but still IRS career staff.⁹ RRA 98 made several changes that increased the independence of the NTA. First, it required that the Secretary of the Treasury

⁵ REPORT OF THE NATIONAL COMMISSION ON RESTRUCTURING THE INTERNAL REVENUE SERVICE: A VISION FOR A NEW IRS (1997).

⁶ Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685. The history of this act, as it relates to the NTA, is discussed at length elsewhere. See, e.g., Nina E. Olson, *Institutionalizing Advocacy: Some Reflections on the Taxpayer Advocate Service's Evolution as an Advocate for Taxpayers*, 18 PITT. TAX REV. 11 *passim* (2020).

⁷ I.R.C. § 7803(c)(2)(A)(i), (4).

⁸ *Id.* § 7803(c)(2)(A)(ii)–(iv).

⁹ See Olson, *supra* note 6; NAT'L TAXPAYER ADVOC. SERV., EVOLUTION OF THE OFFICE OF THE TAXPAYER ADVOCATE, https://www.irs.gov/pub/tas/evolution_of_the_office_of_the_taxpayer_advocate.pdf. But see Bryan T. Camp, *What Good Is the National Taxpayer Advocate?*, 126 TAX NOTES 1243, 1255–56 (2010) (questioning the wisdom of requiring the selection of future NTAs from outside the IRS).

appoint the NTA, in consultation with the Commissioner of Internal Revenue (Commissioner), removing the direct chain of command.¹⁰ Next, RRA 98 removed the NTA from the IRS career track, prohibiting appointment of someone as NTA who had been employed by the IRS within two years and barring employment with the IRS for five years after their service as NTA, to ensure their independence.¹¹ Finally, RRA 98 requires the NTA to submit two annual reports directly to Congress, without prior review by other executives within the Treasury Department.¹²

Nina E. Olson was appointed to be the second NTA and commenced service on March 1, 2001.¹³ Her predecessor had created the bones of the organization, but Olson was able to mold the organization's direction of operation.¹⁴

Olson is “a force of nature,”¹⁵ and she is confident, outspoken, principled, and persistent.¹⁶ She used these traits and her understanding of the congressional mandate, along with her passion for zealous advocacy of taxpayer rights, to turn the NTA into a powerful voice for taxpayers. Future NTAs may not follow the same path, but she leaves a legacy that cannot be ignored. That legacy is most visible for the legislative recommendations contained in the annual reports to Congress.

III. ANNUAL REPORTS TO CONGRESS

Section 7803(c)(2)(B) requires the NTA to make two annual reports to Congress, the first on the office's objectives and the second on its activities, and each is to include “full and substantive analysis, in addition to statistical

¹⁰ I.R.C. § 7803(c)(1)(B)(ii).

¹¹ *Id.* § 7803(c)(1)(B)(iv).

¹² *Id.* § 7803(c)(2)(B)(iii).

¹³ See I.R.S. News Release IR-2001-6 (Jan. 12, 2001).

¹⁴ Olson, *supra* note 6, at [4 n.15].

¹⁵ Bridget T. Roberts, *Women in Tax: Making It Better*, 39 ABA TAX TIMES 37, 40 (2020); Alice Abreu, *Reflections on the Impact of Nina Olson*, PROCEDURALLY TAXING (July 25, 2019), <https://procedurallytaxing.com/reflections-on-the-impact-of-nina-olson-by-alice-abreu/>.

¹⁶ See Camp, *supra* note 9, at 1254.

information.”¹⁷ Both of these reports “shall be provided directly to the committees described in clause (i) without any prior review or comment from the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.”¹⁸

These reports are one of the most powerful tools in the NTA’s arsenal, as they provide the NTA the power to speak directly to Congress without being edited or filtered. Through these reports and the NTA’s resulting access to Congress, Olson’s systemic advocacy resulted in many improvements to the tax system and taxpayer rights.

In the activities reports, the NTA must report on issues that both the NTA and the TAS have been addressing, as well as issues that require attention both at the congressional and administrative levels. Section 7803(c)(2)(b)(ii) currently requires that the annual report:

- (I) identify the initiatives the Office of the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness;
- (II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811;
- (III) contain a summary of the 10 most serious problems encountered by taxpayers, including a description of the nature of such problems;
- (IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action;
- (V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory;
- (VI) contain an inventory of the items described in subclauses (I), (II), and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction;
- (VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b);
- (VIII) identify any Taxpayer Advocate Directive which was not honored by the Internal Revenue Service in a timely manner, as specified under paragraph (5);

¹⁷ I.R.C. § 7803(c)(2)(B)(i).

¹⁸ *Id.* § 7803(c)(2)(B)(iii).

- (IX) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers;
- (X) identify areas of the tax law that impose significant compliance burdens on taxpayers or the Internal Revenue Service, including specific recommendations for remedying these problems;
- (XI) identify the 10 most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes;
- (XII) with respect to any statistical information included in such report, include a statement of whether such statistical information was reviewed or provided by the Secretary under section 6108(d) and, if so, whether the Secretary determined such information to be statistically valid and based on sound statistical methodology; and
- (XIII) include such other information as the National Taxpayer Advocate may deem advisable.¹⁹

Olson’s “recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers”²⁰ have been very effective systemic advocacy. They provided an easy way to identify taxpayer needs to Congress.

Olson delivered to Congress eighteen annual reports.²¹ Each report was exhaustive and comprehensive. The annual reports to Congress were not stereotypical government reports consisting of dry facts and figures. Each report, and its components, was a carefully constructed piece of persuasive advocacy.²²

Reading the annual reports, it is apparent that Olson wrote the reports with her audience in mind. She marshaled all of the evidence available to support each item contained in the report. She drafted these reports drawing not only from IRS and TAS data but exhaustively utilized all other available information. The annual reports included within her narrative economic,

¹⁹ *Id.* § 7803(c)(2)(B)(ii). In 2019, the number of most serious problems encountered by taxpayers was reduced from twenty to ten. Taxpayer First Act of 2019, Pub. L. No. 116-25 § 1301(b)(1), 133 Stat. 981, 992 (2019); see Camp, *supra* note 9, at 1254 (“Those reports reflect her belief that the best path to change is to make the case for change. Repeatedly. For years. *And she does not give up.*”).

²⁰ I.R.C. § 7803(c)(2)(B)(ii)(IX).

²¹ *Reports to Congress*, TAXPAYER ADVOC. SERV., <https://www.taxpayeradvocate.irs.gov/reports/> (last visited Feb. 12, 2021).

²² See generally Camp, *supra* note 9, at 1251–52 (describing the advocacy in the discussion of the use of private debt collectors in the *2007 Annual Report to Congress*).

labor, poverty, and other data, social science research, legal scholarship, comparative research from other countries, comprehensive literature reviews, and original research reports.

Readers had at their fingertips all information necessary to understand all of the problems identified in the report. Olson used this same data-driven information to support her administrative and legislative recommendations.

However, the reports did not stop there. Each report also included tables showing all prior legislative and administrative recommendations and any legislative and administrative actions taken. These iterative tables are helpful to policymakers and researchers as tax issues evolve and may arise in different areas. Those references remained even after Congress or the IRS fully implemented a recommendation, allowing report users to locate the NTAs ongoing research with ease.

This approach also allowed Olson to address more recently identified, related taxpayer issues, coupling them with recommendations relating to how a legislative resolution would work. These were all constructive recommendations that provided a means to address the problems, not just complaints. Each was carefully studied, documented, and prepared. Moreover, as some legislative changes can go awry, these carefully referenced reports allow taxpayers, their representatives, and future lawmakers easy access to the research and prior recommendations.

In 2017, Olson introduced the *Purple Book*. With the *2017 Annual Report to Congress*, the inaugural *Purple Book: A Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration*²³ included fifty recommendations. The introduction explained that it was produced because of congressional interest over the prior two years in improving IRS operations.²⁴

This new volume was predominately made up of recommendations that the NTA had included in prior reports, presented in the form of congressional committee reports: “Present Law,” “Reason for Change,” and

²³ NAT’L TAXPAYER ADVOC., *PURPLE BOOK: A COMPILATION OF LEGISLATIVE RECOMMENDATIONS TO STRENGTHEN TAXPAYER RIGHTS AND IMPROVE TAX ADMINISTRATION* (2017).

²⁴ *Id.* at 1.

“Recommendation.”²⁵ Olson’s 2019 *Purple Book* included 58 recommendations.²⁶

IV. EFFECT OF LEGISLATIVE RECOMMENDATIONS

A. In General

Because the legislative recommendations go directly to Congress, they are powerful tools. Section 7803(c)(2)(B)(ii)(IX) does not specify the number of legislative recommendations that the annual report must contain, as it does with respect to the ten most serious issues facing taxpayers²⁷ and ten most litigated issues.²⁸ However, Olson included numerous legislative recommendations in each annual report, generally relating to at least one of the most serious problems or most litigated tax issues.

While the directive to include legislative recommendations might not have been an intended centerpiece of this office, they were ultimately quite effective and persuasive.²⁹ The proposals became a source of legislative interest, often resulting in the introduction of legislation. The recommendations contained in Olson’s annual reports resulted in the introduction of numerous bills in Congress.³⁰ As a result of these recommendations, more than forty taxpayer protections and systemic improvements have been enacted.³¹

²⁵ See, e.g., *id.* at 5–6.

²⁶ NAT’L TAXPAYER ADVOC., 2019 PURPLE BOOK: COMPILATION OF LEGISLATIVE RECOMMENDATIONS TO STRENGTHEN TAXPAYER RIGHTS AND IMPROVE TAX ADMINISTRATION (2018).

²⁷ I.R.C. § 7803(c)(2)(B)(ii)(III).

²⁸ *Id.* § 7803(c)(2)(B)(ii)(XI).

²⁹ Some commentators raised the concern that the effectiveness of the NTA may have been due in part to her influence. Leslie Book, *A New Paradigm for IRS Guidance: Ensuring Input and Enhancing Participation*, 12 FLA. TAX REV. 517, 572 (2012); Camp, *supra* note 9, at 1248–56 (discussing the challenges of position such as the NTA, requiring the creation of goodwill with an internal constituency like the IRS, while at the same time serving an external constituency like taxpayers, generally).

³⁰ 1 2018 ANNUAL REPORT, *supra* note 4, at 324–50.

³¹ *Id.*

Using these recommendations, she has strengthened the ability of the NTA to serve taxpayers by increasing the cooperation between TAS and the IRS. These reports also provided opportunities for cooperation and collaboration between TAS, the IRS, and Congress. Even if the reports' recommendations did not increase cooperation, they made it more transparent that the organizations were not cooperating. Indeed, Olson framed the introduction of the *Purple Book*, which was presented with the *2017 Annual Report to Congress*, in terms of the cooperation she hoped to accomplish, explaining:

The Office of the Taxpayer Advocate is an independent organization within the IRS that advocates for the interests of taxpayers. The office is non-partisan, and we have dubbed this the “Purple Book” because the color purple, as a mix of red and blue, has come to symbolize a blending of the parties.³²

The *2019 Purple Book* reiterated this sentiment.³³

The cornerstone of Olson's work was systemic improvement, not case advocacy, with local taxpayer advocates taking on the individual cases because one person cannot do it all. However, for the taxpayers to win. Olson recognized that advocating for taxpayers meant not only advocating for improvements in taxpayer rights but also adequate funding of the IRS.³⁴ As a result, despite disagreements on policy and approach to audit and collection, Olson strongly advocated for the IRS; without adequate funding, the IRS cannot provide taxpayer services, modernize its information technology, or provide taxpayer assistance during the filing season.³⁵ Her core concern was taxpayer welfare.

In broad overview, the eighteen annual reports the office of the NTA produced under Olson's leadership contained over 115 specific, unique

³² NAT'L TAXPAYER ADVOC., *supra* note 23, at 1.

³³ NAT'L TAXPAYER ADVOC., *supra* note 26, at 2.

³⁴ See, e.g., *The National Taxpayer Advocate: Hearing Before the Subcomm. on Oversight of the Comm. on Ways and Means*, 115th Cong. 9 (2017) (Statement of Nina E. Olson, National Taxpayer Advocate).

³⁵ See *id.* at 11–12; *National Taxpayer Advocate on the IRS Filing Season: Hearing Before the Subcomm. on Oversight of the H. Common Ways & Means*, 116th Cong. 14, 47–49 (2019) (Statement of Nina E. Olson, National Taxpayer Advocate).

legislative recommendations.³⁶ However, that number, on its own, significantly understates the magnitude of the legislative recommendations, as many of the recommendations were multifaceted, potentially encompassing multiple pieces of legislation.

The Taxpayer Bill of Rights (TBOR) was first included in her *2007 Annual Report to Congress* and is counted as only one legislative recommendation. It is counted as a single legislative recommendation because its substance remained the same, even though Olson advocated for it over multiple years and included it in her annual reports as a legislative recommendation in 2007, 2011, 2013, and 2014.³⁷ There are many other such recommendations.

B. Types of Legislative Recommendations

The NTA's focus is on systemic issues. Her legislative recommendations could be broadly grouped in several ways. The most straightforward would be to look at those affecting systemic administration separately from those affecting specific taxpayer groups. In light of access to justice issues in our system, these systemic issues disproportionately affect low-income taxpayers. Prior to entering government service as the NTA, Olson had been an advocate primarily for low-income taxpayers. As NTA, she continued her tireless advocacy on behalf of this population. However, these are not the only taxpayers who have issues navigating the tax system. Nor are they the only taxpayers that face systemic difficulties that require reform of the system.

Some of the problems caused by the systemic deficiencies were common to low-income and underserved taxpayers, businesses, and well-off taxpayers. Others are more commonly experienced only by taxpayers in one of those groups. Her legislative recommendations addressed all of these groups, as well as the tax system and the IRS.

³⁶ 1 2018 ANNUAL REPORT, *supra* note 4, at 324–50.

³⁷ *See* 1 2007 ANNUAL REPORT, *supra* note 4, at 478–89; 1 2011 ANNUAL REPORT, *supra* note 4, at 473; 1 2013 ANNUAL REPORT, *supra* note 4, at 5; 1 2014 ANNUAL REPORT, *supra* note 4, at 275.

Among the legislative projects that Olson undertook were proposals to correct the penalty regime. These included penalties at all levels, although none of the annual reports addressed all penalties simultaneously. The legislative recommendations included increasing return preparer penalties to address problems with fraudulent and untrained returned preparers.³⁸ This would primarily affect lower-income taxpayers but could affect more affluent and business taxpayers as well.

She also made numerous recommendations regarding eliminating, indexing, or removing preference items from the Alternative Minimum Tax (AMT).³⁹ Because of the effect of the preferences and the lack of indexing, the AMT's increasing reach down the income brackets has become problematic. Still, its complexity has always haunted higher-income taxpayers as well.

For business taxpayers, her recommendation in 2001 and 2008⁴⁰ to allow self-employed individuals to deduct their health insurance premiums for self-employment tax purposes was enacted in 2010.⁴¹ The annual reports also contained many other recommendations to improve tax administration for the benefit of businesses, large and small.

Finally, the vast majority of her legislative recommendations were systemic as they were related to simplification, procedure, or rights. These recommendations would benefit all taxpayers. These included recommendations that would have simplified tax preference items,⁴² clarified that the standard of review in innocent spouse cases under § 6015(f) is *de novo*,⁴³ and strengthened protections for taxpayers against federal tax liens.⁴⁴

³⁸ 1 NAT'L TAXPAYER ADVOC., 2003 ANNUAL REPORT TO CONGRESS, at 270–301 (2003).

³⁹ 1 NAT'L TAXPAYER ADVOC., 2001 ANNUAL REPORT TO CONGRESS, at 166–77 (2001).

⁴⁰ *Id.* at 223; 1 2008 ANNUAL REPORT, *supra* note 4, at 388–89.

⁴¹ Small Business Jobs Act of 2010, Pub. L. No. 111-240, § 2042, 124 Stat. 2504, 2560.

⁴² 1 2010 ANNUAL REPORT TO CONGRESS, *supra* note 4, at 365–72.

⁴³ 1 2011 ANNUAL REPORT TO CONGRESS, *supra* note 4, at 531–36.

⁴⁴ 1 2009 ANNUAL REPORT TO CONGRESS, *supra* note 4, at 357–64.

C. Legislative Role

Given the number of legislative successes that Olson achieved, it is impossible to discuss them all. The following recommendations, which Congress subsequently enacted, demonstrate Olson’s role in protecting taxpayer rights and improving tax administration.

Among the recommendations Congress enacted was the Taxpayer Bill of Rights (TBOR)⁴⁵ that she first included in her legislative recommendations in her *2007 Annual Report to Congress*.⁴⁶ TBOR was not only included in the 2007 annual report but Olson also advocated for it in various other fora, subsequent annual reports, and it was ultimately adopted by the IRS before its legislative enactment. It differs substantially from TBOR1,⁴⁷ TBOR2,⁴⁸ and TBOR3,⁴⁹ which Congress had enacted in 1988, 1996, and 1998, respectively.

The new TBOR is “a thematic, principles-based list of overarching taxpayer rights.”⁵⁰ Olson argued that

[T]he simplicity and clarity of a thematic Bill of Rights help Americans understand their rights in general terms, and this knowledge empowers them to assert their rights and learn the nuances when the need arises.

⁴⁵ Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, § 401, 129 Stat. 3040, 3117.

⁴⁶ 1 2007 ANNUAL REPORT, *supra* note 4, at 478–89. The NTA’s annual report recommended and advocated for the enactment of a TBOR in the 2007, 2011, 2013, and 2014 annual reports, arguing that it would help encourage trust in the tax system, which would increase voluntary compliance. *See supra* note 38.

⁴⁷ Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, § 6226, 102 Stat. 3342, 3731. TBOR1 provides a variety of taxpayer rights, included in various parts of the Internal Revenue Code. *Id.*

⁴⁸ Taxpayer Bill of Rights 2, Pub. L. No. 104-68, 110 Stat. 1452 (1996). This legislation provided an array of taxpayer rights, including the creation of the predecessor National Taxpayer Advocate to the office held by Nina Olson, which was established in the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 1102, 112 Stat. 685, 697–705.

⁴⁹ Internal Revenue Service Restructuring and Reform Act of 1998 § 3000. TBOR3 created a variety of taxpayer rights as part of the 1998 IRS restructuring.

⁵⁰ 1 2013 ANNUAL REPORT, *supra* note 4, at 5.

A thematic Taxpayer Bill of Rights would serve the same purpose [as the Constitutional Bill of Rights] and its value can scarcely be overstated. A Taxpayer Bill of Rights would serve as an organizing principle for tax administrators in establishing agency goals and performance measures, provide foundational principles to guide IRS employees in their dealings with taxpayers, and provide information to taxpayers to assist them in their dealings with the IRS.⁵¹

The IRS adopted her TBOR recommendation in 2014 in Publication 1, following which Congress codified it in 2015 in the Protecting Americans from Tax Hikes (PATH) Act.⁵² The TBOR provided taxpayers with ten rights:

- (A) the right to be informed,
- (B) the right to quality service,
- (C) the right to pay no more than the correct amount of tax,
- (D) the right to challenge the position of the Internal Revenue Service and be heard,
- (E) the right to appeal a decision of the Internal Revenue Service in an independent forum,
- (F) the right to finality,
- (G) the right to privacy,
- (H) the right to confidentiality,
- (I) the right to retain representation, and
- (J) the right to a fair and just tax system.⁵³

Scholars and advocates viewed the codification as an important step forward for taxpayer rights.⁵⁴ Unfortunately, in taxpayer advocacy and

⁵¹ *Id.* at 6.

⁵² I.R.S. News Release IR-2014-72 (June 10, 2014); Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, § 401, 129 Stat. 3040, 3117 (amending § 7803(a) to include the taxpayer's rights proposed by Olson and ensured by the Commissioner under the Internal Revenue Code).

⁵³ I.R.C. § 7803(a)(3).

⁵⁴ *E.g.*, Alice G. Abreu & Richard K. Greenstein, *Embracing the TBOR*, 157 TAX NOTES 1281, 1281–82, 1284, 1291, 1293–98, 1301, 1306 (2017). *But see* Leslie Book, *Giving Taxpayer Rights a Seat at the Table*, 91 TEMP. L. REV. 759, 760, 765–66 (2019).

taxpayer rights, there is always a wrinkle. That means that taxpayers may need to use TBOR carefully, understanding what it does and does not do.⁵⁵

In *Facebook, Inc. v. IRS*, the U.S. District Court for the Northern District of California held that Facebook did not have an enforceable right to have its case referred to the IRS Office of Appeals.⁵⁶ The IRS had issued a notice of deficiency to Facebook asserting underreported income on July 26, 2016, and Facebook filed a petition with the U.S. Tax Court on October 11, 2016.⁵⁷ On March 16, 2017, “IRS sent a letter to Facebook stating that it ‘will refuse to transfer Facebook’s tax case to IRS Appeals.’”⁵⁸ The court concluded that although TBOR, as it had been enacted in the PATH Act, provided that the taxpayer has a “right to appeal a decision of the Internal Revenue Service in an independent forum,”⁵⁹ Facebook was not entitled to such a referral because the action at issue was a final agency action taken and not entitled to review under the Administrative Procedure Act.⁶⁰ Revenue Procedure 2016-22, after notice and comment, provided that a case would not be referred to Appeals after it was designated for litigation.⁶¹ In *Facebook*, a notice of deficiency had already been issued, and the case docketed, after which the IRS refused to refer the case to Appeals.⁶² Ultimately, the court concluded that, despite the provisions in TBOR, Facebook had “no legally enforceable right to compel the IRS to refer its case to IRS Appeals, the court

⁵⁵ T. Keith Fogg, *Can the Taxpayer Bill of Rights Assist Your Clients?*, 91 TEMP. L. REV. 705, 741 (2019) (“If TBOR can alter the culture at the IRS to incorporate taxpayer rights as a major component of each policy decision, it will become an important part of tax administration whether or not it becomes an important part of litigation.”)

⁵⁶ *Facebook, Inc. v. IRS*, No. 17-cv-06490-LB, 2018 U.S. Dist. LEXIS 81986, at *4 (N.D. Cal. May 14, 2018).

⁵⁷ *Id.* at *29.

⁵⁸ *Id.*

⁵⁹ *Id.* at *33.

⁶⁰ *Id.* at *48–51.

⁶¹ Rev. Proc. 2016-22, 2016-15 I.R.B. 577.

⁶² *Facebook*, 2018 U.S. Dist. LEXIS 81986, at *10.

dismisses the complaint with prejudice. There are no deficiencies in the complaint that can be cured, and thus leave to amend would be futile.”⁶³

In its analysis, the court examines each of the annual report recommendations, the legislative history of the TBOR, and the revenue procedures relating to the referral to the Office of Appeals.⁶⁴ The court concluded that TBOR did not provide a substantive right as Facebook asserted. During the pendency of the litigation, Olson said that the rights to appeal be to the IRS Office of Appeals and to go to the U.S. Tax Court were conjunctive.⁶⁵ Congress likely intended that it was effectuating change when it enacted TBOR. The IRS had previously adopted TBOR. While she agreed that Congress’s enactment of TBOR did not create new rights, she disagreed that there was no remedy for its violation. It has taken twenty years to litigate, regulate, and clarify the rights established in RRA 1998, so too will it take time to determine the consequences for violations of TBOR.⁶⁶

As the holding in *Facebook* also demonstrates, even under the guidance of a strong and influential advocate like Nina Olson, who has significant experience, legislative success may not be complete. Moreover, the adoption of taxpayer rights legislation may be iterative, as demonstrated by the enactment of TBOR. Once one problem is solved, another may arise. In *Facebook*, even if TBOR had created the asserted right, what would have been the remedy?⁶⁷ In such cases, it will be necessary to go back and try again. However, having the ability to make such recommendations directly to Congress is a truly powerful tool for advocacy on behalf of all taxpayers.

Immediately before Olson’s retirement, on July 1, 2019, the Taxpayer First Act (TFA)⁶⁸ was signed into law, enacting several recommendations. The TFA could be viewed as a major, although incomplete, victory on several of Olson’s long-term initiatives.

⁶³ *Id.* at *14, *16, *18.

⁶⁴ *Id.* at *4–28, *35–47.

⁶⁵ Nathan J. Richman, *Olson: Taxpayers Have Right to Both Appeals and Tax Court Action*, TAX NOTES (Mar. 29, 2018).

⁶⁶ *See id.*; Fogg, *supra* note 55.

⁶⁷ Fogg, *supra* note 55, at 741–42.

⁶⁸ Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).

First, it increases the NTA's independence by setting a time by which action must be taken on Taxpayer Action Directives (TADs), requiring reporting in the annual report to Congress on any TAD on which action is not taken, and fixing the NTA's salary by statute.⁶⁹ Second, it requires the U.S. Treasury Inspector General for Tax Administration to coordinate research and statistical studies to avoid duplication of efforts and the IRS to provide statistical information.⁷⁰ Third, the TFA also established an IRS Independent Office of Appeals.⁷¹ Finally, it creates new taxpayer rights that include (1) requiring the IRS to develop plans to improve customer service and information technology systems, train employees on taxpayer rights, and require TAS to create plans to improve customer service and information technology systems annually; (2) codifying the Volunteer Income Tax Assistance (VITA) grant program; (3) authorizing the IRS to work with financial institutions to identify misdirected refunds; (4) creating safeguards to assist taxpayers who are victims of identity theft; (5) authorizing IRS employees to recommend a specific Low-Income Taxpayer Clinic; and (6) prohibiting the assignment of some low-income taxpayer accounts to private debt collectors.⁷²

These are merely a few examples of the success of Olson's legislative recommendations in action. Many other recommendations were enacted affecting all taxpayers and everything from the filing and deficiency determination processes, to reporting on foreign bank and financial accounts (FBAR), business income reporting, and penalty amounts and assessments. In addition, she made headway on some of her signature issues, including a uniform definition of a qualifying child,⁷³ the training and registration of paid

⁶⁹ *Id.* § 1301(a), (c).

⁷⁰ *Id.* § 1301(b).

⁷¹ *Id.* § 1001.

⁷² *Id.* §§ 1101, 1205, 1401–1402, 1407, 2001–2008.

⁷³ *See* I.R.C. § 152(c).

tax preparers,⁷⁴ eligibility for innocent spouse relief,⁷⁵ and penalties imposed on erroneous EITC filing.⁷⁶

After eighteen years, a full career for many, during which she testified before Congress more than sixty times,⁷⁷ she was responsible for dozens of pieces of legislation that have improved tax administration.

V. CONCLUSION

This essay has addressed only a few the legislative recommendations Olson made as NTA and her accomplishments in this area. Through her incredible advocacy, as demonstrated by the careful design and crafting of her annual reports to Congress, her thoughtful congressional testimony, her well developed personal relationships within Congress and the IRS, she created an impressive track record of successful legislative accomplishments. Olson's prioritization of work with the tax writing committees paid off for taxpayers. Olson leaves behind an incredible legacy of strong advocacy within the IRS, to Congress, and a roadmap for future progress in advancing taxpayer rights.

⁷⁴ See Howard Gleckman, *Nina Olson's Legacy at the IRS*, TAX POL'Y CTR. (Aug. 8, 2019), <https://www.taxpolicycenter.org/taxvox/nina-olsons-legacy-irs>.

⁷⁵ See Carla Fried, *For "Innocent Spouses," a Helpful Shift in I.R.S. Policy*, N.Y. TIMES (Feb. 11, 2012), <https://www.nytimes.com/2012/02/12/business/yourtaxes/innocent-spouses-get-more-relief-from-irs.html>.

⁷⁶ See Robert Greenstein et al., *Reducing Overpayments in the Earned Income Tax Credit*, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 31, 2019), <https://www.cbpp.org/research/federal-tax/reducing-overpayments-in-the-earned-income-tax-credit>.

⁷⁷ *About Us*, CTR. FOR TAXPAYER RTS., <https://taxpayer-rights.org/about-us/> (last visited Jan. 23, 2021).