

Volume 20 (2022) | ISSN 1932-1821 (print) 1932-1996 (online)  
DOI 10.5195/taxreview.2022.174 | <http://taxreview.law.pitt.edu>

## ARTICLES

### SOME REFLECTIONS ON THE IRS RESTRUCTURING AND REFORM ACT TWENTY-FIVE YEARS LATER

*Nina E. Olson*



This work is licensed under a Creative Commons Attribution-NonCommercial-No Derivative Works 3.0 United States License.

**Pitt** | Open  
Library  
Publishing

This journal is published by [Pitt Open Library Publishing](http://pittopenlibrarypublishing.com).

# ARTICLES

## SOME REFLECTIONS ON THE IRS RESTRUCTURING AND REFORM ACT TWENTY-FIVE YEARS LATER

*Nina E. Olson\**

### I. INTRODUCTION

As I write this article, the Internal Revenue Service (IRS) is about to receive an unprecedented influx of multi-year funding to ramp up its enforcement activities and modernize its technology. The \$80 billion in funding is premised on the IRS raising \$204 billion in new revenue over the next ten years.<sup>1</sup> This funding is long overdue. In 2006, I first made a legislative recommendation that the IRS annual appropriation be taken off-budget since the IRS is the accounts receivable function of the federal government and it brings in more revenue than is appropriated to it.<sup>2</sup> In 2013 and 2018, I identified the underfunding of the IRS as a most serious problem of taxpayers.<sup>3</sup> The current National Taxpayer Advocate continues to beat that drum.

It is this very stream of funding that will create enormous pressure on the IRS to achieve revenue targets and ramp up its activities in ways that it can easily measure and demonstrate progress to its stakeholders. This pressure makes it urgent and necessary that Treasury and IRS officials, members of Congress, and members of the tax professional community,

---

\* Executive Director, Center for Taxpayer Rights.

<sup>1</sup> CONG. BUDGET OFF., ESTIMATED BUDGETARY EFFECTS OF H.R. 5376, THE INFLATION REDUCTION ACT OF 2022 (2022).

<sup>2</sup> See NAT'L TAXPAYER ADVOC. 2006 ANNUAL REPORT TO CONGRESS, 442–57 (2006).

<sup>3</sup> See NAT'L TAXPAYER ADVOC., 2013 ANNUAL REPORT TO CONGRESS, 20–38 (2013); NAT'L TAXPAYER ADVOC., 2018 ANNUAL REPORT TO CONGRESS, 351–58 (2018).

take a clear-eyed assessment of the last time the IRS faced such pressure, what its response was, and what safeguards need to be in place in order to ensure that the IRS does not revert to pre-RRA 98 tactics, or at least the twenty-first century version of these approaches.

Because I believe the IRS needs funding and visionary leadership to achieve a reformed and reimagined tax agency, one that meets the expectations and demands of taxpayers and the challenges for tax compliance in the twenty-first century, I offer these reflections on the IRS Restructuring and Reform Act of 1998 (RRA 98).<sup>4</sup>

## II. THE LEAD-UP TO RRA 98

When I read some articles about the RRA 98, I get the feeling that I must have lived in an alternate universe during that time. While some bemoan the IRS “bashing,” my experience was that of working closely with dedicated members of Congress, their staff, and IRS and Treasury officials to address real problems in the way the IRS operated in the 1990s and bring it, kicking and screaming, into the twenty-first century.

And problems there were, indeed. As I discuss below, under pressure to produce revenue, the IRS set revenue targets not only for examination and collection units but for individual employees. Independent reviews confirmed that this led to premature and overzealous tax assessment and collection actions, as well as penalties being used as bargaining chips.<sup>5</sup> At

---

<sup>4</sup> Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685.

<sup>5</sup> *See, e.g.*, DOUGLAS M. BROWNING, STEPHEN R. COLGATE & RICHARD J. HANKISON, SPECIAL REVIEW PANEL REPORT FOR CHARLES O. ROSSOTTI, COMMISSIONER, INTERNAL REVENUE SERVICE 5 (Aug. 1998). The authors of this report, an Assistant Commissioner for International Affairs of the U.S. Customs Service, an Assistant Attorney General for Administration at the Department of Justice, and the Assistant Director of the Office of Inspection at the Bureau of Alcohol Tobacco and Firearms, respectively, found:

There were recurring and systemic infractions involving the misuse of enforcement statistics. . . . The evidence demonstrates that this was a nationwide problem stimulated at least in part by the flawed policy guidance produced by National Office and regional office officials. This confusion was further exacerbated by the pressures on the Service to close the tax gap and by the institution of the Field Office Performance Indicator measurement system that ranked district offices and underscored the cultural tenet that measurement of productivity was paramount.

the same time, in Fiscal Year (FY) 1996, the IRS answered only 21% of call attempts.<sup>6</sup> In the meantime, between 1990 and 1996, the IRS had squandered billions of dollars appropriated for Tax Systems Modernization of its already-antiquated technology, the backlash, and distrust engendered by this debacle being used even today to justify not investing in the IRS.<sup>7</sup>

It was not as if these problems had gone unnoticed. RRA 98 did not spring out of some vacuum. Instead, it was the fourth piece of *bipartisan* legislation, and by far the most comprehensive one, over a period of ten to twelve years that attempted to address concerns with the IRS's administration of the tax system and treatment of taxpayers. First came the Taxpayer Bill of Rights (TBOR 1) in 1988,<sup>8</sup> followed in 1992 by Title V of the Revenue Bill of 1992, containing a second Taxpayer Bill of Rights.<sup>9</sup>

---

*See also* JOINT COMMITTEE ON TAXATION, GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN 1998, 78 (1998) (“The Congress believed that penalties should only be imposed where appropriate and not as a bargaining chip.”).

<sup>6</sup> NAT'L COMM'N ON RESTRUCTURING THE INTERNAL REVENUE SERV., A NEW VISION FOR A NEW IRS app. E-1 (1997) [hereinafter RESTRUCTURING COMM'N REPORT]. In retrospect, after two years of IRS abysmal phone service during the pandemic and recovery, the 1990s level of service looks pretty good. *See* NAT'L TAXPAYER ADVOC., FISCAL YEAR 2023 OBJECTIVES REPORT TO CONGRESS 5 (2022) (reporting the IRS customer service representatives answered 10% of calls enterprise-wide during the 2022 filing season).

<sup>7</sup> BARRY BOZEMAN, PRICEWATERHOUSECOOPERS ENDOWMENT FOR THE BUSINESS OF GOVERNMENT, GOVERNMENT MANAGEMENT OF INFORMATION MEGA-TECHNOLOGY: LESSONS FROM THE INTERNAL REVENUE SERVICE'S TAX SYSTEMS MODERNIZATION 11 (2002). To cite a few of the problems, TSM involved over twenty projects that were ultimately abandoned or failing. For example:

The Corporate Accounts Processing System (CAPS) was meant to create a single integrated database of taxpayer account information. The idea was to resolve corporate issues immediately via access to the CAPS database. The system was terminated after \$179 million [in 1990s dollars] was spent on it. The Integrated Case Processing (ICP) system was supposed to permit customer-service representatives to access in one step all the data needed to answer taxpayer questions and resolve problems. A total of \$44.9 million was spent on ICP before it was suspended.

*Id.* at 18. As I noted in the *2018 National Taxpayer Advocate Annual Report to Congress*, the IRS *still* does not have a 360 degree view of taxpayer accounts; and customer service representatives *still* do not have access to many of the sixty case management systems on which taxpayer information is stored. NAT'L TAXPAYER ADVOC., 2018 ANNUAL REPORT TO CONGRESS 351–58 (2018). For an independent review of the TSM problems, see NAT'L RSCH. COUNCIL, CONTINUED REVIEW OF TAX SYSTEMS MODERNIZATION OF THE INTERNAL REVENUE SERVICE (1996).

<sup>8</sup> Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, 102 Stat. 3342.

<sup>9</sup> H.R. 11, 102d Cong. Tit. V (1992) (pocket vetoed by Pres., Nov. 5, 1992).

This latter legislation, often overlooked, was passed by the House and Senate, only to be vetoed by President G.H.W. Bush because it contained a tax increase.

Notwithstanding the veto, Congress did not give up on its concerns. In 1995, Congress authorized the *bipartisan* National Commission on Restructuring the IRS (Restructuring Commission), based on the following findings:

- (1) While the budget for the Internal Revenue Service (hereafter referred to as the “IRS”) has risen from \$2.5 billion in fiscal year 1979 to \$7.3 billion in fiscal year 1996, tax returns processing has not become significantly faster, tax collection rates have not significantly increased, and the accuracy and timeliness of taxpayer assistance has not significantly improved.
- (2) To date, the Tax Systems Modernization (TSM) program has cost the taxpayers \$2.5 billion, with an estimated cost of \$8 billion. Despite this investment, modernization efforts were recently described by the GAO as “chaotic” and “ad hoc.”
- (3) While the IRS maintains that TSM will increase efficiency and thus revenues, Congress has had to appropriate additional funds in recent years for compliance initiatives in order to increase tax revenues.
- (4) Because TSM has not been implemented, the IRS continues to rely on paper returns, processing a total of 14 billion pieces of paper every tax season. This results in an extremely inefficient system.
- (5) This lack of efficiency reduces the level of customer service and impedes the ability of the IRS to collect revenue.
- (6) The present status of the IRS shows the need for the establishment of a Commission which will examine the organization of IRS and recommend actions to expedite the implementation of TSM and improve service to taxpayers.<sup>10</sup>

In 1996, Congress passed the Taxpayer Bill of Rights 2 (TBOR 2) by a 425-0 roll call vote in the House of Representatives and unanimous consent, without amendment, in the Senate; this time, the President signed the Act on July 30, 1996.<sup>11</sup> In November 1997, Charles O. Rossotti was sworn in as

---

<sup>10</sup> Treasury, Postal Service, and General Appropriations Act, Pub. L. No. 104-52, § 637, 109 Stat. 468, 509–13 (1995).

<sup>11</sup> Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996). For legislative activity, see CONGRESS.GOV, *Actions Overview H.R.2337–104th Congress (1995–1996)*, <https://www.congress.gov/bill/104th-congress/house-bill/2337/actions?q=%7B%22roll-call-vote%22%3A%22all%22%7D> (last visited Sept. 11, 2022).

Commissioner of Internal Revenue after being confirmed by the Senate 92-0. There was bipartisan hope that Commissioner Rossotti would be able to put the IRS on the path of transformation.<sup>12</sup> Meanwhile, the bipartisan Restructuring Commission held thirteen public hearings, including three field hearings, with 102 witnesses, on topics including tax simplification; technology; governance and oversight; performance measures; the budget process; Taxpayer Advocate Service and Problem Resolution; procurement and outsourcing; the Century Date change (remember that?); and of course return processing, audits, and collection. The Commission met with 195 government, nonprofit and private stakeholders (including myself), twenty-one professional groups, ten consultants, and seventy-eight IRS National Office personnel. It conducted over 300 interviews with IRS employees.<sup>13</sup> It produced an important, bipartisan report that not only analyzed the current state of IRS service and enforcement activities, but also the state of technology, the workforce, and employee training.<sup>14</sup> It made concrete recommendations, which served as a blueprint for RRA 98.<sup>15</sup>

In fact, bipartisanship is one of the most striking features of the period leading up to RRA 98's enactment, which passed the House, 402-8, and the Senate, 96-2.<sup>16</sup> Far from being concerns of a fringe few, there were serious-minded legislators and staff who worked on the Restructuring Commission and RRA 98.<sup>17</sup> As the hearing records show, all of them knew that

---

<sup>12</sup> David Stout, *Man in the News: Charles Ossola Rossotti; Hope for I.R.S. in 2000*, N.Y. TIMES (Nov. 4, 1997), <https://www.nytimes.com/1997/11/04/us/man-in-the-news-charles-ossola-rossotti-hope-for-irs-in-2000.html>.

<sup>13</sup> RESTRUCTURING COMM'N REPORT, *supra* note 6, at app. C.

<sup>14</sup> *Id.* at 25–28 (providing analysis and recommendations for modernization of the IRS).

<sup>15</sup> See, e.g., *Taxpayer Rights Proposals and Recommendations of the National Commission on Restructuring the Internal Revenue Service on Taxpayer Protections and Rights: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means 105th Cong.* 1–8 (1997) [hereinafter *Taxpayer Rights Proposals*] (requesting written public comment on legislative proposals, “[I]ncluding those contained in H.R. 2292, the ‘Internal Revenue Service Restructuring and Reform Act of 1997,’ which implements the June 25, 1997, Report of the National Commission on Restructuring the Internal Revenue Service (IRS)”).

<sup>16</sup> CONGRESS.GOV, *All Actions H.R. 2676—105th Congress (1997–1998)*, <https://www.congress.gov/bill/105th-congress/house-bill/2676/all-actions?q=%7B%22search%3A%5B%22cite%3A%5B%22%5D%7D&s=1&r=1&overview=closed—tabs> (last visited Sept. 11, 2022).

<sup>17</sup> Yes, Chairman Archer and Chairman Roth made extreme statements and took their opportunities to show horror stories. But, the serious-minded among the Commission included House

reforming the IRS was deeply serious work and that they must accomplish it in a deeply serious fashion.<sup>18</sup>

Let's take a look at a bit of that work. On September 26, 1997, the Oversight Subcommittee of the House Ways and Means Committee held a day-long hearing with two panels on taxpayer rights and H.R. 2292.<sup>19</sup> The first panel included the IRS Acting Commissioner, the Treasury Acting Assistant Secretary for Tax Policy, the IRS Chief Counsel and the Taxpayer Advocate, and three witnesses from GAO. The second panel's ten witnesses were representatives of various tax professional and other groups, including the American Bar Association Tax Section and the American Institute of Certified Public Accountants, and me, representing The Community Tax Law Project, the low-income taxpayer clinic I founded in 1992.<sup>20</sup> This hearing alone covered an incredible breadth of experience and perspectives.

Between January 28 and February 25, 1998, the Senate Finance Committee held four hearings, including ones with the then-current and four former IRS Commissioners.<sup>21</sup> It held an entire hearing—two panels—on innocent spouse relief!<sup>22</sup> On February 5, 1998, I was again privileged to be called to testify about the problems low-income taxpayers were facing and the need for federal funding of Low Income Taxpayer Clinics

---

members Rob Portman and Nancy Johnson; Senators Bob Kerry and Chuck Grassley; Commission members Bob Tobias of the National Treasury Employees Union (NTEU) and David Keating from the National Taxpayers Union; as well as Commission staffers such as Jeff Trinca, Armando Gomez, Anita Horn (Rizek), Chuck Lacijan, Doug Shulman (a future Commissioner), Dean Zerbe, George Guttman, and James Dennis; and Hill staff including Donna Steele Flynn, Barb Pate, Russ Sullivan and Mark Prater; and Chris Rizek from Treasury.

<sup>18</sup> *Taxpayer Rights Proposals*, *supra* note 15.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at iii. I have written elsewhere about how I, a person with no experience on Capitol Hill and basically pretty clueless about the entire legislative process, was invited to testify about the problems low-income taxpayers were experiencing at the hands of the IRS. See Nina E. Olson, *The Tax Section's Role as an Advocate for Equal Access to Justice: A Personal History*, 68 THE TAX LAW. 427 (2015). Keith Fogg has his own version of some of these events in this issue. Keith Fogg, *The Rooms Where it Happened*, 20 PITT. TAX REV. 95 (2022).

<sup>21</sup> *IRS Restructuring: Hearings on H.R. 2676 Before the S. Comm. on Fin.*, 105th Cong. 51–98 (1998) [hereinafter *IRS Restructuring*].

<sup>22</sup> *Id.* at 141–70.



(LITCs).<sup>23</sup> The witnesses that day included Michael Saltzman, author of the pre-eminent treatise on IRS practice and procedure; among the topics discussed was the proposal that later became Collection Due Process hearings.<sup>24</sup> My memory of the hearing, which is confirmed by the hearing record itself, including the Questions For the Record (QFRs), is that the questions were probing and challenging. The Senators were trying to understand what needed to be done to make the tax system work, not just for the revenue collectors but also for the taxpayers themselves. Unlike so many pieces of legislation today, you can actually trace proposals that became law to the points where they were first raised and suggested by witnesses and explored in hearings and QFRs.

Since that time, I have testified before Congress about sixty-five more times, but I have never witnessed a legislative effort dealing with tax administration (as distinguished from tax policy) as comprehensive as RRA 98. Not even the Taxpayer First Act<sup>25</sup> (for which I have great affection not least because it includes versions of over twenty of the legislative proposals I made over the years as National Taxpayer Advocate) arose from the coordinated, public, and transparent effort to modernize the IRS. Anyone who thinks RRA 98 was just pure IRS bashing has not read the Commission's report or the *complete* hearing record.

### III. CREATING A CUSTOMER/TAXPAYER FOCUSED AGENCY THROUGH BALANCED PERFORMANCE MEASURES

So now let's get down to how the IRS responded to the oversight and attention leading to RRA 98. Here I will focus on the management side—the efforts to change the culture of the IRS. Recall that Congress told the IRS to revise its mission statement “to place a greater emphasis on serving the public and meeting taxpayers’ needs.”<sup>26</sup> But, even before RRA 98 was signed into law, the IRS had undertaken a major reorganization according

---

<sup>23</sup> *Id.* at 329–40 (statement of Nina E. Olson, Executive Director, The Community Tax Law Project).

<sup>24</sup> I.R.C. §§ 6320, 6330.

<sup>25</sup> Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).

<sup>26</sup> § 1002, 112 Stat. at 690.



to a plan announced by Commissioner Rossotti on January 28, 1998.<sup>27</sup> In the meantime, on May 20, 1997, Vice President Al Gore and Treasury Secretary Robert Rubin announced a National Performance Review (NPR) study to improve customer service at the IRS. An IRS Customer Service Task Force was created consisting of over sixty front-line employees and managers, Treasury officials, and NPR staff. After months of work, in March 1998, the Task Force published a succinct but comprehensive report, *Reinventing Service at the IRS*, which identified more than 200 actions that could help improve how the IRS serves taxpayers.<sup>28</sup>

Under the section, “Measure What You Want to Get,” the Task Force discussed how to “build a system that focuses on customers.” One of its key recommendations, first identified by the National Commission on Restructuring the IRS,<sup>29</sup> incorporated into Commissioner Rossotti’s plan,<sup>30</sup> and ultimately adopted by RRA 98,<sup>31</sup> was to “create a balanced scorecard” of measures.

**Problem:** IRS performance measures are production driven, overvalue enforcement, focus on isolated steps, not outcomes, and may inadvertently encourage unfair treatment of taxpayers. However, getting rid of the wrong measures is only part of the solution; the other part is to put the right measures in place.

---

<sup>27</sup> *IRS Restructuring*, *supra* note 21, at 20–29 (statement of Charles O. Rossotti, Commissioner of Internal Revenue Service) [hereinafter Rossotti Testimony]. See also *IRS Restructuring*, *supra* note 21, at 354–62 (prepared statement of Charles O. Rossotti, Commissioner of I.R.S.). Section 1001 of RRA 98 directs the Commissioner to develop and implement such a plan, establishing “organizational units serving particular groups of taxpayers with similar needs.” § 1001(a)(3), 112 Stat. at 689.

<sup>28</sup> Vice President Al Gore, Treasury Secretary Robert E. Rubin, with the front-line employees of the IRS, *REINVENTING SERVICE AT THE IRS* at 1, IRS Publication 2197, 3-1998 [hereinafter *REINVENTING SERVICE*]. “The Task Force interviewed hundreds of people: it listened to complaints, read letters from taxpayers and met with tax preparers. The Task Force gathered ideas from others in government and the private sector, including businesses that excel in customer service and consultants who help those companies improve customer service.” *Id.* at 1.

<sup>29</sup> *RESTRUCTURING COMM’N REPORT*, *supra* note 6, at 46.

<sup>30</sup> Rossotti Testimony, *supra* note 27, at 20–29. “It is essential to have measures of organizational performance that balance customer satisfaction, business results, employee satisfaction and productivity. It is particularly important that performance measures do not directly or indirectly cause inappropriate behavior toward taxpayers, and that they provide incentives for service-oriented behavior.”

<sup>31</sup> § 1204, 112 Stat. at 722.

The lack of balance in the IRS's measures is illustrated by the 1996 IRS Data Book. Page after page describes financial and enforcement results in detail—\$1.5 trillion collected, \$30 billion collected from delinquent accounts, 10,000 seizures of everything from jewelry to houses and cars, 750,000 liens, 3,109,000 levies on wages and accounts, 9,559 requests for a grand jury, and numbers of indictments, convictions and individuals “sent to prison” by region. Yet Table 10, “Taxpayer Assistance and Education Programs,” takes up only one-third of a page in the 44 page document. It records 99 million taxpayers assisted by telephone, but says nothing about how many callers received busy signals or were placed on hold. It reports that 6.4 million taxpayers visited walk-in service sites, but says nothing about how long people waited or if they were able to get the forms or answers they needed. And, despite all the workload statistics, there is nothing about the people who do the work, other than their number, job, and race or national origin.<sup>32</sup>

As noted earlier, this lack of balance in performance measures was applied not only by ranking districts and service centers based on these enforcement metrics but also rating individual employee performance. The IRS described this practice as follows:

In the 1990s, an attempt was made to increase the emphasis on enforcement revenue by establishing a quantitative performance index to rank the performance of the IRS district offices, an index in which enforcement statistics comprised about 70 percent of the weight of the index. This index was a very important factor in evaluating the performance of the district management. However, by law and regulation, these same measurements were not supposed to be used to evaluate front-line employees. As is now known, this approach resulted in a misalignment of measures for managers and employees, in turn causing a range of serious problems including widespread violations of the regulations on the use of statistics.<sup>33</sup>

In RRA 98, Congress prohibited the IRS from using “records of tax enforcement results [ROTERS] (1) to evaluate employees; or (2) to impose or suggest production quotas or goals with respect to such employees.” It further required the IRS to “use the fair and equitable treatment of

---

<sup>32</sup> REINVENTING SERVICE, *supra* note 28, at 77–78. The latest *2021 IRS Data Book* is not much better; only three of the thirty-three tables pertain to taxpayer assistance in the traditional sense of the word. I.R.S., 2021 DATA BOOK (2022), <https://www.irs.gov/pub/irs-pdf/p55b.pdf>.

<sup>33</sup> I.R.S., MODERNIZING AMERICA'S TAX AGENCY 43 (1999) [hereinafter MODERNIZING AMERICA'S].

taxpayers by employees as one of the standards for evaluating employee performance.”<sup>34</sup>

On August 6, 1999, following a public hearing in May 1999, Treasury published regulations implementing sections 1201 and 1204 of RRA 98 and establishing a balanced measurement system that included customer satisfaction, employee satisfaction, and business results (both quantitative and qualitative).<sup>35</sup> The regulations provided for application of these measures at the organizational level and at the individual employee level. It stated that performance measures at the organization level should be “stated in objective, quantifiable and measurable terms and, subject to the limitation set forth in paragraph (b) of this section, will be used to measure the overall performance of various operational units within the IRS.” Paragraph 801.1(b) provides:

(b) *Limitation.* Quantity measures (as described in § 801.6) will not be used to evaluate the performance of or to impose or suggest production goals for any organizational unit with employees who are responsible for exercising judgment with respect to tax enforcement results (as defined in § 801.6) *except in conjunction with an evaluation or goals based also upon Customer Satisfaction Measures, Employee Satisfaction Measures, and Quality Measures.*<sup>36</sup> [Emphasis added.]

In describing how performance measures will be used to evaluate individual employee performance (as distinguished from organizational performance), the regulation provided that employees “exercising judgment with respect to tax enforcement results” may be evaluated based on information derived from a review of the cases they handled. However, the regulation placed an additional limitation on evaluation of these employees:

(3) Performance measures based in whole or in part on Quantity Measures (as described in § 801.6) will not be used to evaluate the performance of *or to impose or suggest goals* for any non-supervisory employee who is responsible for exercising judgment with respect to tax enforcement results (as defined in § 801.6). [Emphasis added.]<sup>37</sup>

---

<sup>34</sup> § 1204(a)–(b), 112 Stat. at 722.

<sup>35</sup> Treas. Reg. § 801.1 (1999).

<sup>36</sup> Treas. Reg. § 801.2(b) (1999) (removed and reserved 2005 T.D. 9227).

<sup>37</sup> Treas. Reg. § 801.3(e)(2) (as amended in 2008).

In 2005, Treasury published a temporary regulation, significantly amending the above provisions. The preamble to the regulation states,

The IRS and Treasury Department have determined that the provisions of the existing part 801 regulations that limit the use of quantity measures in evaluating organizational units and imposing or suggesting production goals for employees restrict the IRS' ability to monitor program performance and track effectiveness of operations, and have caused confusion as to what types of data or measures may be discussed between managers and employees and reflected in manager and employee goals. These temporary regulations remove the limitations on the use of quantity measures in evaluating the performance of, or imposing or suggesting goals for organizational units. *These temporary regulations also remove the limitations on the use of quantity measures to impose or suggest goals for employees.* The regulations continue to provide that performance measures based on quantity measures will not be used to evaluate the performance of such employees. The temporary regulations do not affect the continuing prohibition on the use of ROTERS to evaluate employee performance or to impose or suggest production quotas or goals for any employee. [Emphasis added.]<sup>38</sup>

Accordingly, the temporary regulation, later finalized in 2008,<sup>39</sup> eliminates § 1.808.2(b), thereby allowing the performance of organizational units exercising enforcement powers to be evaluated based on tax enforcement results alone. Further, the 2005 temporary regulation and 2008 final regulation revised the wording of the limitation on evaluating individual employee performance by deleting the prohibition on *imposing or suggesting tax enforcement result goals* for front-line enforcement employees.<sup>40</sup>

As National Taxpayer Advocate, my staff and I objected strongly to these changes, in writing, and in conversations, to the Commissioner, Chief Counsel, and Treasury. We pointed out it was these insinuated (aka “suggested”) goals for enforcement results that got the IRS into hot water in the first place in RRA 98 and led to significant distrust of the IRS. We reasoned that setting an organizational goal of x levies for a Collection

---

<sup>38</sup> Balanced System for Measuring Organizational and Employee Performance within the Internal Revenue Service, 70 Fed. Reg. 60214 (Oct. 17, 2005).

<sup>39</sup> Balanced System for Measuring Organizational and Employee Performance within the Internal Revenue Service, 73 Fed. Reg. 60627 (Oct. 14, 2008).

<sup>40</sup> Treas. Reg. §§ 801.2–3 (2008).

Territory comprised of ten offices with eight revenue officers in each office would result in each revenue officer being expected to issue x/80 levies. Every revenue officer would know that just to achieve a “met” in their annual performance rating, they would have to hit that target. And, if they wanted to get an “exceeds” or “outstanding” (and receive a bonus), they would have to surpass that target. Our concerns were ignored.

The 2005-2008 regulations are a far cry from what the IRS wrote in 1999 about its new performance management system:

Concerning work with taxpayers, the changes implied are directly related to the restated mission. All actions must be looked at from the taxpayer’s point of view and, in particular, must insist on observation of taxpayer’s rights. This criterion is a strategic goal, a guiding principle of our modernization effort, and a direct element in measuring and evaluating the performance of every manager and employee. Good quality work is the result of understanding the taxpayer’s point of view and the law, not one or the other.<sup>41</sup>

IRS employees understand very clearly what they need to do in order to receive a good evaluation. If leadership emphasizes the number of levies issued, liens filed, audits closed, and duration of calls, employees will get the message of what is valued by management. If leadership emphasizes protection of taxpayer rights and listening to taxpayers, even if that increases cycle time on cases or calls, employees will hear that message and behave accordingly. The difference is that it is easy to track numbers—both individually and systemically. On the other hand, it requires effort, training, mentoring, and constant reminders to ensure employee performance based on “observation of taxpayer’s rights” and hearing the “taxpayer’s point of view.” In 2005, the IRS took the cheap way out and undermined the advances of RRA 98 in the performance measures field. Unless reversed, this approach poses significant risk as the IRS faces even greater pressure to produce in light of the funding influx from the Inflation Reduction Act.

#### IV. ENFORCEMENT REVENUE IS A LIMITED MEASURE OF IRS ENFORCEMENT

In the aftermath of RRA 98, just as the IRS backslid in the area of performance measures, critics of the legislation focused on enforcement

---

<sup>41</sup> MODERNIZING AMERICA’S, *supra* note 33, at 46.

revenue as the measure that shows whether the IRS is or is not performing well. For example, in 2002, the American Bar Association Section of Taxation held several panels focusing on the decline in enforcement statistics and whether IRS reform went too far.<sup>42</sup> The panels reviewed a six-year trend in “enforcement metrics,” between FY 1996 and 2001, finding enforcement revenue declined by about 11%. At the same time, enforcement activities declined more precipitously. One panel reported that between 1996 and 2001, liens filed had dropped 57%, levies issued dropped by 86%, and seizures dropped by 98%. Between 1996 and 2000, face-to-face audits of individuals with income under and over \$100,000 annual income had dropped by 74% and 57%, respectively. Over the same period, corporations with assets under five million dollars saw a drop in audits of 62%, while corporations with assets over five million dollars dropped by 33%.<sup>43</sup>

Looking at the above percentage declines, one has to wonder why enforcement revenue did not decline as precipitously as all of the enforcement activity did. Might it possibly be that in 1996, the enforcement activity was poorly targeted and even counter-productive? Could the re-engineering of business processes in collection and exam mean that fewer resources were needed to collect revenue? Could it be that increased attention to pre-filing and filing services helped mitigate any negative compliance impact of less enforcement activity? Note that by January 2, 1998, the IRS had expanded its hours of service on the phone to six days per week, sixteen hours a day, and achieved a 70% level of access on the phones for the 1998 filing season,<sup>44</sup> up from 51% in 1997.<sup>45</sup>

---

<sup>42</sup> See, e.g., Lawrence B. Gibbs, Miller & Chevalier, *The Meaning of Declining Enforcement Statistics*, ABA TAX SECTION ADMIN. PRACTICE COMM. (2002) (citing the *IRS Oversight Board Annual Report* that it is “concerned that the broad decline in enforcement activity increases our reliance on voluntary compliance, and fears that the public’s attitude towards voluntary compliance is beginning to erode.”); *IRS Reform—Did We Go Too Far?*, ABA TAX SECTION CIVIL AND CRIMINAL TAX PENALTIES (2002) (showing between 1981 and 1999 the decline of audit staff and number of audits, levies, liens, seizures, and federal tax prosecutions).

<sup>43</sup> *IRS Reform—Did We Go Too Far?*, at tbl.2.

<sup>44</sup> Rossotti Testimony, *supra* note 27, at 4.

<sup>45</sup> MODERNIZING AMERICA’S, *supra* note 33, at 18.

In *Modernizing America's Tax Agency*, published by the IRS in February 1999, the IRS set out three goals to effect the IRS' mission: top quality service to each taxpayer; top quality service to all taxpayers; and productivity through a quality work environment.<sup>46</sup> Here's what the report said about the role of enforcement revenue in tax administration.

**Enforcement revenue is not a measure of success**

It is important to distinguish the goal of *service to all taxpayers* by increasing overall compliance from the notion of "enforcement revenue." Enforcement revenue is any tax, penalty, or interest gained from a specific taxpayer by an IRS enforcement action, usually an examination or a collection. *This revenue represents about 2 percent of the revenue collected by the IRS.* [Emphasis added]

Historically, the IRS placed great emphasis on direct enforcement revenue, in part because it is precisely measurable and in part because it showed an indirect deterrent effect that increases compliance. However, there are many techniques other than direct enforcement that increased compliance at the IRS and elsewhere, such as better and more targeted taxpayer education, better reporting, voluntary agreements, improved regulations, earlier intervention through notices and phone calls. Since 98 percent of the revenue comes in without enforcement action, *an increase of 1 percent in voluntary compliance would be roughly equivalent to a 50 percent increase in enforcement revenue.* [Emphasis added.] Also, enforcement actions are expensive because they are labor intensive and often lengthy, sometimes extending for years after the tax was due. Therefore, *enforcement activity is a vital component of a strategy for achieving overall compliance, but it is not the only component. Moreover, enforcement revenue is not a good measure of success in achieving the strategic goal of service to all taxpayers.* [Emphasis in original.]<sup>47</sup>

So let's parse these enforcement numbers a bit more, going back to the "good old days" of pre-RRA 98. I will focus here on collection revenue because IRS Data Books going back to 1995 are relatively consistent in representing revenue from collection and the definition of enforcement revenue is notoriously squishy.<sup>48</sup> As Table 1 shows, the number of levies,

---

<sup>46</sup> *Id.* at 3.

<sup>47</sup> *Id.* at 6.

<sup>48</sup> While the IRS Data Books provide a wealth of information, they omit a lot of data necessary to analyze the effectiveness and efficiency of the IRS and how it is treating taxpayers. For example, we do not know how many levies are released each year on the basis of economic hardship under I.R.C. § 6343(a)(1)(D). Nor do we know how many math error assessments under I.R.C. § 6213(b) are later abated, or how many assessed penalties are abated each year. In 2013, I proposed a suite of measures the IRS should adopt (or create) in order to know how it is treating taxpayers and adhering to taxpayer



liens, and seizures dropped precipitously between 1995 and 2001, the period of hearings and IRS restructuring, although that decline had plateaued or even been reversed a bit by 2001.

---

rights protections. See NAT'L TAXPAYER ADVOC., 2013 ANNUAL REPORT TO CONGRESS xvii–xviii (2013). In 2015 onward, TAS published a *Taxpayer Rights Assessment*, aligning performance measures and data with the ten rights included in the Taxpayer Bill of Rights of I.R.C. § 7803(a)(3). See 2015 NAT'L TAXPAYER ADVOC., 2015 ANNUAL REPORT TO CONGRESS xvii–xxiii (2015).

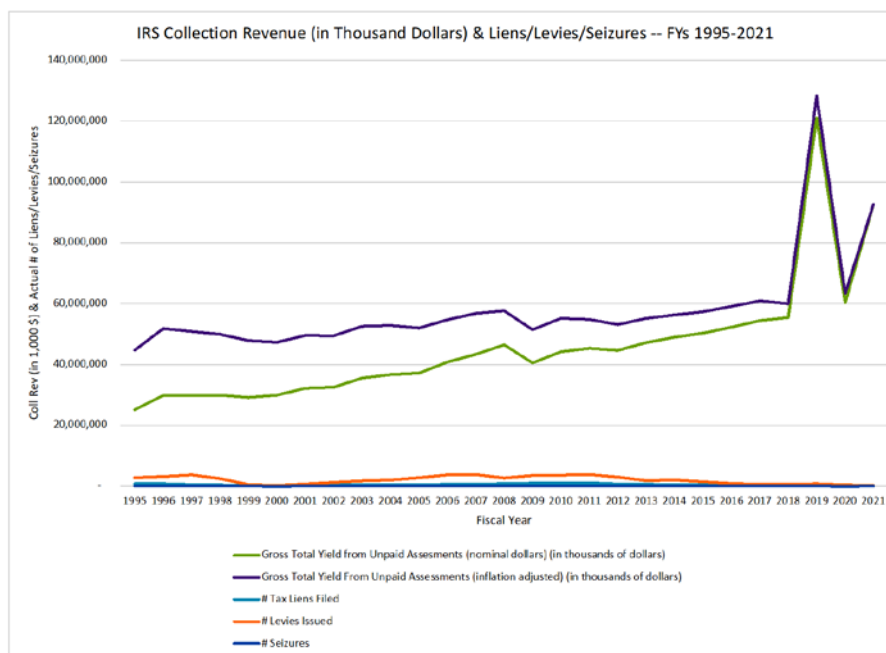
**Table 1: IRS Collection Revenue and Collection Activity,  
Fiscal Years 1995-2021<sup>49</sup>**

Fiscal Year	Gross Total Yield from Unpaid Assessments (nominal dollars) (in thousands of dollars)	Gross Total Yield From Unpaid Assessments (inflation adjusted) (in thousands of dollars)	# Tax Liens Filed	# Levies Issued	# Seizures
1995	25,149,857	44,766,745	799,000	2,722,000	11,000
1996	29,775,099	51,808,672	750,000	3,109,000	10,000
1997	29,913,365	50,852,721	544,000	3,659,000	10,000
1998	29,906,522	49,943,892	383,000	2,503,000	2,259
1999	29,167,115	47,834,069	168,000	504,000	161
2000	29,935,564	47,298,191	288,000	220,000	74
2001	32,186,839	49,567,732	426,166	674,080	234
2002	32,557,571	49,487,508	482,509	1,283,742	296
2003	35,507,826	52,551,582	544,316	1,680,844	399
2004	36,659,487	52,789,661	534,392	2,029,613	440
2005	37,113,036	51,958,250	522,887	2,743,577	512
2006	40,813,309	54,689,834	629,813	3,742,276	590
2007	43,318,830	56,747,667	683,659	3,757,190	676
2008	46,446,261	57,593,364	768,168	2,631,038	610
2009	40,520,516	51,461,055	965,618	3,478,181	581
2010	44,173,492	55,216,865	1,096,376	3,606,818	605
2011	45,270,987	54,777,894	1,042,230	3,748,884	776
2012	44,613,336	53,089,870	707,768	2,961,162	733
2013	47,152,648	55,168,598	602,005	1,855,095	547
2014	48,951,974	56,294,770	535,580	1,995,987	432
2015	50,262,866	57,299,667	515,247	1,464,026	426
2016	52,303,406	59,102,849	470,602	869,196	436
2017	54,378,716	60,904,162	446,376	590,249	323
2018	55,502,635	59,942,846	419,220	639,025	275
2019	121,039,606	128,301,982	543,604	782,735	228
2020	60,324,317	63,340,533	291,081	398,269	77
2021	92,627,815	92,627,815	212,251	305,610	96

<sup>49</sup> I.R.S., SOI TAX STATS—DELINQUENT COLLECTION ACTIVITIES—IRS DATA BOOK TABLE 25, <https://www.irs.gov/statistics/soi-tax-stats-delinquent-collection-activities-irs-data-book-table-25> (last visited Jan. 21, 2023) [hereinafter IRS DATA BOOK TABLE 25] (Delinquent Collection Activities by Fiscal Years 1994–2021 available here and used to create this table). For Fiscal Years (FYs) 1995 and 1996, this data was published as Table 20; for FYs 1998 and 1997, this data was published as Table 21; and from FYs 1999 through 2018, this data was published as Table 16.

But here is where things get really interesting. Chart 1 shows that even as levies, liens, and especially seizures never reached the level of 1995, collection revenue—in inflation-adjusted dollars—remained relatively constant between 1995 and 1999, and in the last few years increased significantly. Whether the IRS issued 3.7 million levies (FY 2006—more than those issued in pre-RRA 98 years) or almost two million levies (FY 2014), inflation-adjusted collection revenue remained the same. Whether the IRS had 7,500 revenue officers (FY 1996) or 5,451 (FY 2009), inflation-adjusted collection revenue was constant. And in FY 2019, IRS inflation-adjusted collection revenue spiked at \$1.21 billion, when the IRS only had 2,995 revenue officers.

**Chart 1: IRS Collection Revenue Fiscal Years 1995-2021**<sup>50</sup>



Now, there are factors both internal and external to the IRS that affect revenue collection, and the number of liens, levies, and seizures undertaken.

<sup>50</sup> *Id.*

In the seizure arena, RRA 98 ushered in significant taxpayer rights protections for seizures.<sup>51</sup> In 2011, the IRS announced its “Fresh Start” initiative, including ceasing to automatically file liens on balances under \$10,000, after a Taxpayer Advocate Research study showed that automatically filing such liens reduced past debt and current payment compliance and the taxpayer’s income in future years, thereby reducing collection potential.<sup>52</sup> Table 1 shows that between FY 2011 and FY 2012, IRS lien issuances dropped from 1.2 million to 707,000, likely the result of that change in policy; yet, collection revenue remained relatively constant. IRS implementation of the 250% of poverty level filter for levies on Social Security benefits under the Federal Payment Levy Program, done pursuant to TAS research studies showing these levies disproportionately impacted taxpayers who were unable to meet their basic living expenses, may have

---

<sup>51</sup> See, e.g., §§ 3445(a), 3445(b), 112 Stat. at 762–63 (amending I.R.C. §§ 6334(a)(13)(B), 6334(e)(1), respectively, requiring the IRS to receive written approval of a U.S. district court judge or magistrate prior to seizing a taxpayer’s principal residence). One of the very first Congressional cases that dropped in my lap as National Taxpayer Advocate in 2001 was an egregious example of IRS use of liens and levies pre-RRA 98, involving coerced collection under threat of seizing the principal residence of the elderly owner and a disabled family member. With consent of the taxpayer, this case formed the basis for the example in my legislative proposal for extending the period to request a wrongful levy from nine months to two years. I.R.C. § 6343(b). See NAT’L. TAXPAYER ADVOC., 2001 ANNUAL REPORT TO CONGRESS 202–09 (2001). Here is the example:

The IRS assessed \$120,000 of additional tax on five years of a couple’s joint tax returns. In 1986, the couple entered into an installment agreement with the IRS. The taxpayers made timely monthly payments of \$500 each from 1986 to 1997. The husband died in 1994 and his widow, age 65, continued making the required payments to IRS.

By December 1997, the taxpayer had paid \$155,000 in taxes, penalties and interest. When the statutory period to collect the tax was close to expiration, the IRS asked her to sign an extension, lengthening the collection period. She refused to sign this waiver. The IRS then levied on her retirement funds, reducing her income resources to her monthly social security check. The IRS also began the process of seizing her home. *Id.* at 202.

The proposal was enacted sixteen years later in the Tax Cuts and Jobs Act, Pub. L. No. 115-97, § 11071(a) (2017). The following year, in the Bipartisan Budget Act of 2018, another aspect of my original proposal was enacted—providing for the IRS to return levy proceeds wrongfully levied from a retirement plan; allowing the recipient to recontribute them to a retirement plan; and providing for the refund of tax paid on the wrongful levy of the retirement plan. Bipartisan Budget Act of 2018, Pub. L. No. 115-124, § 41104(a) (adding I.R.C. § 6343(f)).

<sup>52</sup> See 2 NAT’L TAXPAYER ADVOC., 2011 ANNUAL REPORT TO CONGRESS 91–111 (2011); 2 NAT’L TAXPAYER ADVOC., 2012 ANNUAL REPORT TO CONGRESS 105–30 (2012).

led to the reduction in levies issued between FYs 2013 and 2015.<sup>53</sup> And of course, the freeze on liens and levies during the pandemic account for the significant reduction in those actions during those years during FYs 2020 and 2021.<sup>54</sup>

Finally, there is the matter of refund offsets, or, as the *IRS Data Book* describes them, “credit transfers.” As Table 2 and Chart 2 below show, refund offsets were relatively stable until FY 2019, when inexplicably they accounted for 63% of collection revenue, far outstripping revenue attributable to liens, levies, or seizures. And in FY 2021, refund offsets brought in significant amounts of revenue. This increase in offsets is likely directly attributable to Rebate Recovery Credits claimed on Tax Year 2020 returns.<sup>55</sup>

---

<sup>53</sup> See 2 NAT'L TAXPAYER ADVOC., 2008 ANNUAL REPORT TO CONGRESS 46–73 (2008). It took several years for the IRS to program its systems to exclude these accounts, once TAS and the IRS reached agreement about this exclusion.

<sup>54</sup> See, e.g., I.R.S., IRS UNVEILS NEW PEOPLE FIRST INITIATIVE; COVID-19 EFFORT TEMPORARILY ADJUSTS, SUSPENDS KEY COMPLIANCE PROGRAM, IR-2020-59 (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program> (last visited Jan. 21, 2023).

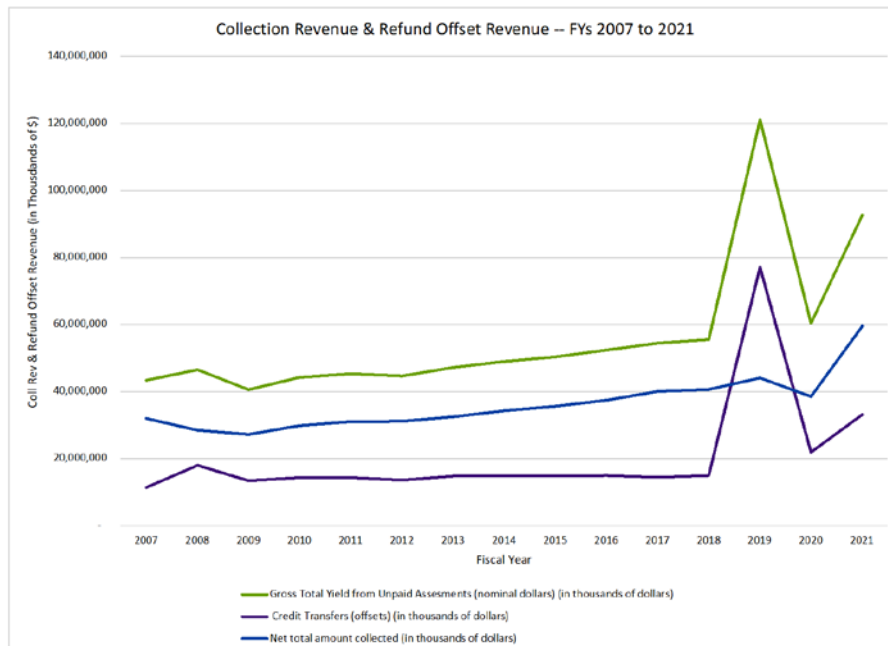
<sup>55</sup> The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (2020) and the American Rescue Plan Act (ARPA), Pub. L. No. 117-2, 134 Stat. 4 (2021) provided for a rebate recovery credit (RRC) for Tax Years 2020 and 2021, to assist families struggling with job loss and health issues during the pandemic. While the advance payments (known as Economic Impact Payments) were protected from offset, the RRCs claimed by the taxpayer on their returns were subject to offset.

**Table 2: Collection Revenue and Refund Offsets—Fiscal Years  
2007-2021<sup>56</sup>**

<b>Fiscal Year</b>	<b>Gross Total Yield from Unpaid Assessments (nominal dollars) (in thousands of dollars)</b>	<b>Credit Transfers (offsets) (in thousands of dollars)</b>	<b>Net total amount collected (in thousands of dollars)</b>	<b>Credit Transfers as % of Gross Total Yield (in thousands of dollars)</b>
2007	43,318,830	11,366,431	31,952,399	26.24%
2008	46,446,261	17,980,613	28,465,648	38.71%
2009	40,520,516	13,324,478	27,196,038	32.88%
2010	44,173,492	14,343,418	29,830,074	32.47%
2011	45,270,987	14,261,645	31,009,342	31.50%
2012	44,613,336	13,509,257	31,104,079	30.28%
2013	47,152,648	14,687,967	32,454,781	31.15%
2014	48,951,974	14,759,090	34,192,884	30.15%
2015	50,262,866	14,711,948	35,550,918	29.27%
2016	52,303,406	14,925,300	37,378,106	28.54%
2017	54,378,716	14,395,007	39,983,710	26.47%
2018	55,502,635	14,895,892	40,606,743	26.84%
2019	121,039,606	77,038,752	44,000,854	63.65%
2020	60,324,317	21,860,277	38,464,040	36.24%
2021	92,627,815	33,109,946	59,517,869	35.75%

<sup>56</sup> IRS DATA BOOK TABLE 25, *supra* note 49.

**Chart 2: Collection and Refund Offset Revenue—Fiscal Years 2007-2021<sup>57</sup>**



In presenting this data, I am not arguing that the IRS does not need to hire more revenue officers or issue liens, levies, or seizures where appropriate. My point here is that looking at these raw numbers does not really tell us the whole story. They beg the question, *do we really want to jack up enforcement revenue if what it takes to get that revenue is the emphasis on rankings and techniques employed by auditors or collectors in 1996?* What was and is still needed is a focus on listening to the taxpayer, on educating the taxpayer, on achieving voluntary rather than enforced compliance, and reserving the IRS's awesome enforcement powers for that part of the taxpaying population that will not respond to these softer approaches. What is required is a nuanced approach to tax administration that builds trust with the taxpayer population through assistance and education and uses power legitimately.

<sup>57</sup> *Id.*



As the Customer Service Task Force noted back in 1998,

An organizational emphasis on dollars collected from enforcement activities discourages managers from putting resources into customer service, outreach, education, or creating partnerships with specific industries to correct or prevent tax problems. The Task Force found little room in the existing measurement system for managers or staff to be acknowledged for revenue generated as the result of successful efforts to encourage voluntary compliance. The goal is compliance—the measurement system needs to focus on the goal and encourage multiple strategies to achieve it.<sup>58</sup>

Despite all the concerns about RRA 98 tying the hands of the IRS, increasing voluntary compliance is what RRA 98 was all about. If you read and study the pages and pages of documents and hearings and reports that were produced by commissions, the IRS, and Congress between 1996 and 2002, as I have, what you see is a serious effort to reform the IRS to truly honor its contract with the U.S. taxpayers. As the IRS makes its plans for how to spend the influx of funding pursuant to the Inflation Reduction Act of 2022, it would do well to read those pages carefully. Congress has invested in the IRS, but the years leading up to RRA 98 show that trust, once lost, takes decades to regain. We do not need to go through that cycle again. The IRS needs to demonstrate it recognizes that taxpayer service, taxpayer rights, and voluntary compliance are as and even more important than enforcement actions. The IRS can signal that commitment to everyone by adopting the performance measures I first recommended in 2015 and holding its officers, managers, and employees accountable to those measures.

---

<sup>58</sup> REINVENTING SERVICE, *supra* note 28, at 79.