March 15, 2023

The Honorable Daniel Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Commissioner Werfel and Secretary Yellen:

We write in strong support of dual commitments the Treasury Department made regarding the *Inflation Reduction Act's* increased funding for the Internal Revenue Service (IRS).[1] American taxpayers have a right to a fair and just tax system[2]—a right that this funding is meant to help our constituents and all Americans realize. Given our shared commitment to fairness and justice in the tax system, we are pleased to note your confirmation that audit rates will not rise above historic levels for small businesses or households making under $400,000 annually, and that new enforcement funds provided in the IRA will focus on reducing tax avoidance by large corporations and the mega-rich.[3]

Specifically, Secretary Yellen directed former Commissioner Rettig "that any additional resources—including any new personnel or auditors that are hired—shall not be used to increase the share of small business or households below the $400,000 threshold that are audited relative to historical levels."[4] This means that, contrary to the misinformation from opponents of this legislation, small business and households earning $400,000 per year or less will not see an increase in the chances that they are audited. Instead, enforcement resources will focus on high-end noncompliance.

We appreciate this clarity. We also understand that the Administration is still working on the operational plan regarding implementation of the new funding and Secretary Yellen's directive. We ask that this plan, when finalized, continue to reflect and elaborate on your stated focus on

[1] Letter from Secretary of Treasury Janet Yellen to IRS Commissioner Charles Rettig, August 10, 2022, https://home.treasury.gov/system/files/136/JLY-letter-to-Commissioner-Rettig-Signed.pdf.
[2] Internal Revenue Service, "Taxpayer Bill of Rights," https://www.irs.gov/taxpayer-bill-of-rights#fair.
[3] Letter from Secretary of Treasury Janet Yellen to IRS Commissioner Charles Rettig, August 10, 2022, https://home.treasury.gov/system/files/136/JLY-letter-to-Commissioner-Rettig-Signed.pdf.
[4] *Id*.

protecting taxpayer rights and increasing enforcement for high-income individuals and large corporations.[5]

IRS Must Use New Funding to Improve Tax Fairness and Close the Tax Gap Caused by Corporate and Ultra-wealthy Taxpayers' Tax Avoidance

The tax gap—the difference between taxes owed and taxes paid—has dramatically increased in recent years, ballooning to a projected $540 billion per year.[6] As former IRS Commissioner Rettig stated, budget constraints and reduced staff contributed to this increase and contributed to the diminished ability of the IRS to "maintain sufficient audit coverage of entities and individuals contributing the most to the tax gap."[7] It is time to ensure that the top 1% of wealthy Americans—who account for more than a third of all unpaid federal income tax, yet have seen their audit rates decline dramatically in the past decade—meet their responsibilities.[8] For too long wealthy tax cheats have been able to rely on a depleted IRS to avoid paying their fair share, while hard-working Americans shoulder the burden of paying to run our government.

In particular, the IRS must reverse the declining audit rates for the very richest taxpayers, such as those with incomes over $10 million, which are nearly 80 percent lower than they were almost a decade ago.[9] The IRS must ensure that the wealthy are not audited at lower rates than low-income taxpayers, including those receiving the Earned-Income Tax Credit (EITC), who work and make less than $60,000.[10] Similarly, the IRS needs to reverse the declining audit rates for the largest companies, such as those with over $20 billion in assets, which declined by nearly 50%.[11] Reversing those audit rate declines for the wealthiest individuals and largest corporations means hiring and training elite forensic auditors and upgrading IT systems so those auditors can find the hidden cash of wealthy tax cheats, whether it is stashed in overseas bank accounts, expensive art, or complex partnership structures.

We welcome the administration's focus on high-income individuals making over $400,000. Treasury and IRS should apply that guardrail to ensure that billionaires cannot avoid scrutiny by using complex tax-avoidance strategies to report low incomes.[12] We urge you to study and take

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[5] Memorandum from Secretary of the Treasury Janet Yellen to IRS Commissioner Rettig, August 17, 2022, https://www.taxnotes.com/research/federal/other-documents/other-treasury-documents/yellen-requests-irs-plan-on-resource-implementation/7dym5.

[6] Internal Revenue Service, "IRS updates tax gap estimates; new data points the way towards enhancing taxpayer service, compliance efforts," October 28, 2022, https://www.irs.gov/newsroom/irs-updates-tax-gap-estimates-new-data-points-the-way-toward-enhancing-taxpayer-service-compliance-efforts.

[7] Letter from IRS Commissioner Rettig to Senator Elizabeth Warren, August 27, 2021, https://www.warren.senate.gov/imo/media/doc/Warren%20et%20al%20response%20to%20Warren%20082721.pdf.

[8] National Bureau of Economic Research, "Tax Evasion at the Top of the Income Distribution: Theory and Evidence," John Guyton, Patrick Langetieg, Daniel Reck, Max Risch, Gabriel Zucman, March 2021, https://www.nber.org/system/files/working_papers/w28542/w28542.pdf.

[9] Tax Notes, "Shrinking the Tax Gap: A Comprehensive Approach," Charles O. Rossotti, Natasha Sarin, and Lawrence H. Summers, December 15, 2020, https://www.taxnotes.com/featured-analysis/shrinking-tax-gap-comprehensive-approach/2020/11/25/2d7ht#.

[10] *Id.*

[11] *Id.*

[12] ProPublica, "The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax," Jesse Eisinger, Jeff Ernsthausen, and Paul Kiel, June 8, 2021, https://www.propublica.org/article/the-secret-irs-files-trove-of-never-before-seen-records-reveal-how-the-wealthiest-avoid-income-tax.

into account how the ultra-wealthy make their money as you invest the new enforcement resources, drawing on the funding included in the *Inflation Reduction Act* for "research and statistics of income."[13]

IRS Must Protect the Rights of Lower-Income Taxpayers

While the IRS channels its new resources into ensuring the wealthiest individuals pay their fair share, it must also protect taxpayers' rights, especially those of lower-income Americans. You have stated that you "expect audit rates for honest taxpayers to decline, once the IRS has the right technological infrastructure in place."[14]

We urge you to thoroughly examine and address the issues and the inequities that the audit and related processes, particularly correspondence audits and math error corrections, pose to taxpayers. Correspondence audits can be uninformative, confusing, terrifying and—ultimately—financially crippling for lower-income families, if they even reach the taxpayers at all. Tax experts report that ambiguity in the correspondence audit and math error notices causes confusion and frustration for low-income taxpayers, who then have trouble reaching the IRS for assistance or updates on their case.[15] Meanwhile, high-income taxpayers—who have many other advantages like access to accountants and lawyers—disproportionately benefit from in-person field or office audits, meaning they have one or more assigned IRS employees with whom they can speak about their cases.[16] The *Inflation Reduction Act* funding presents an opportunity to dramatically improve IRS correspondence with lower-income taxpayers and related online, phone, and in-person support.

Low-income individuals face particular challenges when interacting with the IRS audit system. Those with lower incomes are less likely to be represented by tax professionals, or even to have a consistent mailing address at which they can receive correspondence from the IRS.[17] Taxpayers have a statutory right to "be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes," as well as the right to "challenge the IRS's position."[18] But thanks to underfunding, the IRS has increasingly relied on correspondence audits, mailing out hundreds of thousands of brief, form letters that scrutinize low-income taxpayers' returns. These

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[13] *Inflation Reduction Act of 2022*, Sec. 10301(1)(A)(iii), https://www.congress.gov/bill/117th-congress/house-bill/5376/text.
[14] U.S. Department of the Treasury, "Remarks by Secretary of the Treasury Janet L. Yellen at the IRS facility in New Carrollton, Maryland," September 15, 2022, https://home.treasury.gov/news/press-releases/jy0952.
[15] Bloomberg Tax, "IRS Service Woes Slowing Streamlined Low-Income Taxpayer Audits," Naomi Jagoda and Richard Tzul, June 21, 2022, https://news.bloombergtax.com/daily-tax-report/irs-service-woes-slowing-streamlined-low-income-taxpayer-audits; ProPublica, "Who's More Likely to Be Audited: A Person Making $20,000 – or $400,000?," Paul Kiel and Jesse Eisinger, December 12, 2018, https://www.propublica.org/article/earned-income-tax-credit-irs-audit-working-poor.
[16] *Id.*
[17] Bloomberg Tax, "IRS Service Woes Slowing Streamlined Low-Income Taxpayer Audits," Naomi Jagoda and Richard Tzul, June 21, 2022, https://news.bloombergtax.com/daily-tax-report/irs-service-woes-slowing-streamlined-low-income-taxpayer-audits; National Taxpayer Advocate, "Annual Report to Congress 2022," pp. 18-19, https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/.
[18] Taxpayer Advocate Service, "Taxpayer Bill of Rights," https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights/.

form letters are often ambiguous, causing confusion and frustration for low-income taxpayers, who then have trouble reaching the IRS for assistance or updates on their case.[19]

Response rates for these correspondence audits are low—only around 55%—and are declining. The low response rate reflects that many taxpayers do not understand the audit notice, or even receive it, denying them their taxpayer rights to be informed of IRS decisions about their taxes and challenge the IRS's position.[20] Meanwhile, for those making over $10,000,000 in income per year, the correspondence audit rate and failure to respond rate are significantly lower, 32.2 percent and 0.2 percent respectively, and have fallen since FY 2019.[21] As the National Taxpayer Advocate's 2022 Annual Report to Congress summarizes, "[a]s income levels increase, the relative number of correspondence audits and failure-to-respond rates decreases, whereas the agreed rates rise."[22]

Funding from the *Inflation Reduction Act* provides an opportunity to ensure equity in the audit and math error processes. We urge the IRS to prioritize rectifying this inequity in the operational plan. Specifically, we hope to see the quality of IRS correspondence improved and that low-income taxpayers also able to speak with IRS employees familiar with their cases, leading to reductions of non-response rates and an improvement in customer satisfaction results.

Improved Taxpayer Service and Information Technology Renewal Must Occur Swiftly

The IRS can and should improve equity by quickly bettering its notoriously poor customer service. The *Inflation Reduction Act* included nearly $3.2 billion for taxpayer services, as well as an additional $25 billion for operations support to support both taxpayer services and enforcement programs, including IT investments.[23] We urge you to use that funding so our constituents can reach an IRS customer service representative by phone without waiting more than a few minutes on the line. Additionally, the IRS should restore in-person customer service by increasing the number of Taxpayer Assistance Centers ("TACs") and by extending the opening hours of existing TACs. By increasing IRS responsiveness to taxpayer queries, the Service will improve the trust so critical to the successful operation of a voluntary tax system.

The IRS also can improve trust by replacing its antiquated information technology ("IT"). The Individual Master File ("IMF")—the data source for all individual tax accounts—was constructed in the 1960s and uses a code language so antiquated that many people who understand it are retired. The IRS should use *Inflation Reduction Act* funds to swiftly modernize the IMF so that taxpayer data remains secure and accessible. Additionally, unlike many large companies, the IRS does not have callback technology available across all of its phone networks.

[19] Bloomberg Tax, "IRS Service Woes Slowing Streamlined Low-Income Taxpayer Audits," Naomi Jagoda and Richard Tzul, June 21, 2022, https://news.bloombergtax.com/daily-tax-report/irs-service-woes-slowing-streamlined-low-income-taxpayer-audits.
[20] Internal Revenue Service, "Taxpayer Bill of Rights," https://www.irs.gov/taxpayer-bill-of-rights#fair.
[21] National Taxpayer Advocate, "Annual Report to Congress 2022," pp. 18-19, https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/.
[22] *Id.*
[23] *Inflation Reduction Act of 2022*, Sec. 10301(1)(A), https://www.congress.gov/bill/117th-congress/house-bill/5376/text.

Although we have seen encouraging improvements,[24] many of our constituents have wasted hours waiting on hold to talk with IRS personnel. We know the IRS has committed to expanding its callback capabilities,[25] and we urge you to do so quickly.

We agree with the Biden Administration's and Treasury's commitments to increase audits of the wealthy and large corporations while not raising audit rates above historic levels for households earning less than $400,000. We also strongly encourage the IRS to examine its processes and procedures to strengthen taxpayers' rights, to improve taxpayer service, and to close the tax gap by ensuring wealthy individuals pay their fair share.

Thank you for your attention to this matter.

Sincerely,

Elizabeth Warren
United States Senator

Angus S. King, Jr.
United States Senator

Edward J. Markey
United States Senator

Christopher A. Coons
United States Senator

Bernard Sanders
United States Senator

Alex Padilla
United States Senator

[24] The Washington Post, "The IRS braces for the unthinkable: A normal tax season," Jacob Bogage, March 3, 2023, https://www.washingtonpost.com/business/2023/03/03/irs-taxes-biden-law/.
[25] IRS, "Taxpayer First Act Report to Congress," January 2021, https://www.irs.gov/pub/irs-pdf/p5426.pdf#page=46; FedScoop, "IRS customer experience exec says callback trial saved taxpayers 1.7M hours of hold time," John Hewitt Jones, November 16, 2022, https://fedscoop.com/irs-customer-experience-exec-says-callback-trial-saved-taxpayers-1-7m-hours-of-hold-time/.

Ron Wyden
United States Senator

Martin Heinrich
United States Senator

John Hickenlooper
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