

# United States Senate

WASHINGTON, DC 20510-6200

September 21, 2022

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

Dear Commissioner Werfel:

Recently reported information demonstrates the Internal Revenue Service's (IRS) March 2021 decision to destroy 30 million unprocessed tax year 2019 taxpayer information returns has indisputably harmed taxpayers. In order to understand the extent and scope of harm done to taxpayers, we are requesting new information and responses to unanswered queries from an earlier Republican Finance Committee May 26, 2022 letter<sup>1</sup> by October 15, 2023.

For example, one<sup>2</sup> of the recent reports<sup>3</sup> provides troubling evidence of specific taxpayers who were directly harmed by the destruction of these information returns. For these taxpayers, the IRS denied their earned income tax credit (EITC) claim based upon the mistaken belief that the taxpayers had insufficient earned income. Extrapolating from IRS enforcement data obtained through Freedom of Information Act (FOIA) requests, the author persuasively argues that potentially 20,000 or more taxpayers who claimed the EITC for 2019 likewise had their claims denied or challenged by the IRS solely because the IRS had destroyed evidence of these taxpayers' income. He also posits that because of procedural rules a high percentage of these taxpayers may have already "lost" their valid EITC claims simply because they did not have the resources or expertise to timely respond to the IRS' challenges or because they settled the matter and moved on.

As the above-cited report notes, workers whose EITC claims are denied or challenged by the IRS for lack of sufficient earned income can be liable for significant tax deficiencies, penalties, and interest, not to mention being barred from claiming the credit for up to ten years. While the taxpayers in the report ultimately prevailed in retaining their EITC with time and expense, they

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<sup>1</sup> Letter from Members of the Senate Finance Committee to IRS Commissioner Charles P. Rettig, May 26, 2022, [https://www.finance.senate.gov/imo/media/doc/sfc\\_gop\\_letter\\_to\\_commissioner\\_rettig\\_30m\\_destroyed\\_information\\_returns.pdf](https://www.finance.senate.gov/imo/media/doc/sfc_gop_letter_to_commissioner_rettig_30m_destroyed_information_returns.pdf)

<sup>2</sup> Justin Schwegel, *'There Will Come Soft Rains': Automation Amid Unprecedented Destruction*, 180 TAX NOTES 1437 (2023).

<sup>3</sup> See also, e.g., Chandra Wallace, *How Many EITCs Were Lost When the IRS Destroyed 30 Million 1099s?* 180 Tax Notes 1704 (2023) ("Lawyers at low-income taxpayer clinics in Florida, Indiana, and Maine confirmed to Tax Notes that taxpayers they represented faced automated correspondence exams for the 2019 tax year because the IRS said the Forms 1099 for their non-employee income were missing or 'not submitted'.").

were also fortunate to obtain legal counsel through a low-income taxpayer clinic. It is highly likely that not all affected taxpayers have been so favored.

Meanwhile, the IRS still officially maintains that “[t]here were no negative taxpayer consequences as a result of this action.” Your letter to us dated April 20, 2023 likewise paints a picture of “no harm, no foul,” stating that:

- “Relief” has been provided to taxpayers “whenever appropriate,”
- The destruction of the 30 million unprocessed information returns “avoided unnecessary cost” and simply “followed records control schedules approved by the National Archives and Records Administration (NARA),”
- Taxpayers whose returns include income substantiated by a destroyed information return would have their returns evaluated “based on the documentation the taxpayer submits with that return,” and
- The IRS “provided responses” to all questions heretofore raised about this matter.

There are significant issues with all of these contentions, and the additional evidence described above significantly undermines any claim that no one was harmed here. Instead, it appears that:

- “Relief” was not provided by the IRS to at least some, and potentially thousands of, taxpayers who claimed the EITC in 2019,
- The destruction of these unprocessed information returns was unnecessary and its direct and indirect harm is disproportionate to whatever storage costs the IRS would have incurred,
- To date, the IRS is systemically<sup>4</sup> denying/challenging EITC claims that rely upon income reported by these destroyed information returns rather than evaluating documentation in each case, and
- The IRS has not responded to diverse substantive issues arising from this episode.

We flagged the potential EITC impact of the destruction of these information returns in our 2022 letter to the IRS Commissioner, but did not receive an adequate response to many questions. In addition to answering questions 2, 4, and 5 of the 2022 letter, please answer the following:

1. For the 2019 tax year, how many taxpayers claiming an EITC had their claims challenged or denied by the IRS in whole or part because the IRS lacked evidence to substantiate all claimed income?
2. Of these taxpayers:
  - a. How many did not timely contest the merits of the IRS’s challenge or denial?
  - b. How many timely contested such denial and are currently before the IRS Office of Independent Appeals, US Tax Court, district court, or Court of Federal Claims?
  - c. How many have raised the issue in a claim contesting any IRS collection action?

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<sup>4</sup> See *id.*

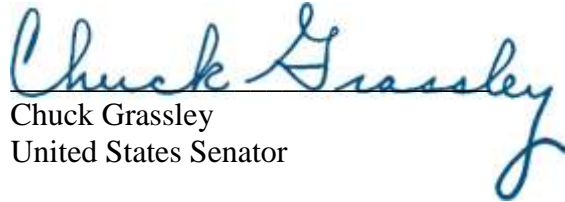
- d. How many contesting the challenge or denial have had their claims with respect to earned income sustained in whole or part (including instances where the IRS withdrew its contest of the matter)?
3. For the 2019 tax year, what is the total amount the IRS has assessed against taxpayers with respect to the denial of an EITC claim? Of this amount, how much is attributable to denying claims, whether in whole or part, based upon income claimed by a taxpayer that the IRS was not able to substantiate? Please include breakout line items for deficiencies, penalties, and interest, as well as the number of claims, and amounts of deficiencies, penalties, and interest with respect to such assessments that are currently (or have been) subject to IRS liens, levies, or other collection actions.
4. How many taxpayers had 2019 information returns destroyed by the IRS without processing? Of these, how many have had any tax item (including the EITC) denied or challenged by the IRS because of income claimed by the taxpayer that the IRS could not substantiate?
5. What action did the IRS take in response to all System Advocacy Management Systems (SAMS) complaints alerting the IRS to problems arising from the destruction of these information returns, including specifically SAMS complaint No. 61208 that the report author alleges he sent? Please assess the extent to which the IRS fully followed its procedures with respect to each such SAMS.
6. Beyond the impact to EITC claimants, what other fact patterns exist where the IRS's decision to destroy tax year 2019 information returns without processing them has resulted in direct or indirect harm to a taxpayer?
7. What guidance, if any, did the IRS issue to its submission processing or exam functions, as well as Volunteer Income Tax Assistance (VITA) volunteers, alerting them to the potential issues arising from the information return destruction? When was such guidance widely distributed?
8. How much money has the IRS paid to taxpayers pursuant to section 7430 for a tax year 2019 return claiming the EITC that was examined, challenged, or otherwise denied by the IRS and which also claimed income that the IRS was not able to substantiate? How many taxpayers received such a payment?
9. What, if any, automation did the IRS put in place to address potential issues arising from the destruction of these records? When was such automation put in place?
10. What are the self-employment tax and Social Security benefit implications for those taxpayers who were wrongfully denied EITC because of claimed income that the IRS was not able to substantiate? What steps has the IRS undertaken to address these issues for impacted taxpayers?

Thank you for your immediate attention to this critical matter.

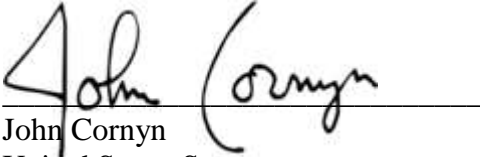
Sincerely,



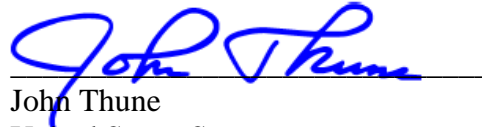
Mike Crapo  
United States Senator



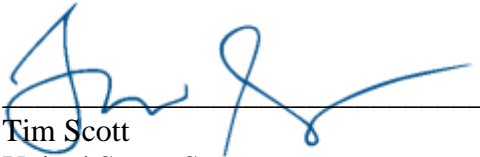
Chuck Grassley  
United States Senator



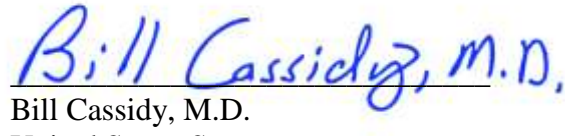
John Cornyn  
United States Senator



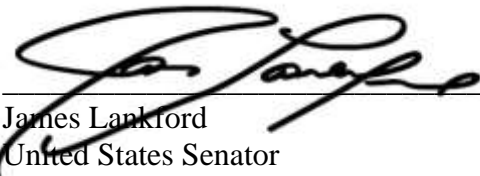
John Thune  
United States Senator



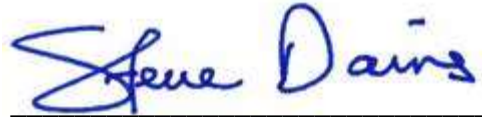
Tim Scott  
United States Senator



Bill Cassidy, M.D.  
United States Senator



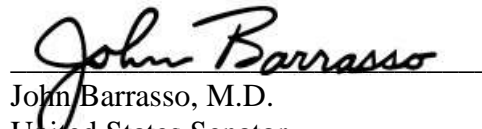
James Lankford  
United States Senator



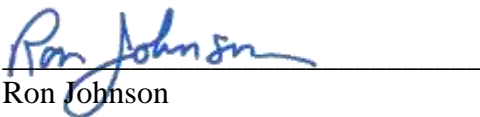
Steve Daines  
United States Senator



Todd Young  
United States Senator



John Barrasso, M.D.  
United States Senator



Ron Johnson  
United States Senator



Thom Tillis  
United States Senator



Marsha Blackburn  
United States Senator