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#19

The IRS Mismanages Joint Filers' Separate Accounts

RESPONSIBLE OFFICIALS

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DEFINITION OF PROBLEM

The IRS creates, on average, more than 87,000 accounts each year when it separates the accounts of married taxpayers who file joint returns.¹ Unless the IRS properly manages these separate accounts, taxpayers are harmed in the following ways:

- The IRS may engage in unlawful collection actions due to a miscalculation of the period of limitations on collection on the separate account. If the period of limitations on refunds has already expired when the error is identified, the IRS may not be able to reverse its error;
- The IRS may apply payments to the wrong account. This triggers erroneous refunds with respect to the account to which the payment was erroneously applied, and inappropriate collection activity with respect to the account for which the payment was intended;
- The IRS may not timely create the separate accounts, or the IRS taxpayer assistor may not realize that separate accounts exist. As a consequence, both the IRS and the taxpayer may be confused about the existence or amount of the taxpayer's liability; and
- The IRS may improperly disclose one joint filer's personal information to the other joint filer's representative.

The National Taxpayer Advocate identified problems with the IRS's management of joint filers' separate accounts as a Most Serious Problem in the 2003 Annual Report to Congress.² Although the IRS has made some improvements, as noted in the 2005 Annual Report,³ procedures for monitoring these accounts have been largely unexamined.

¹ See Chart 1.19.1, *infra*, 2007-2009. The IRS created 98,030 MFT 31 accounts in fiscal year (FY) 2007; 85,024 in FY 2008; and 79,308 in FY 2009. The IRS creates separate accounts when 1) joint liability is interrupted and the joint filers become liable for different amounts; 2) the joint filers become subject to different periods of limitation on assessment or collection; or 3) collection activities are prohibited against one, but not both, of the joint filers. See IRM 21.6.8.3 (Oct. 1, 2009) for a list of specific events that trigger the creation of separate accounts.

² National Taxpayer Advocate 2003 Annual Report to Congress 170.

³ National Taxpayer Advocate 2005 Annual Report to Congress 328.

The Customer Account Data Engine (CADE), which will eventually replace the Master File Tax (MFT) system on which most taxpayer accounts are stored, would not forestall or correct the problems that arise when joint filers' accounts are not properly separated or managed, and any future adaptation of CADE to address these problems will not provide relief for years.⁴ Joint filers whose accounts are not being properly managed need immediate relief.

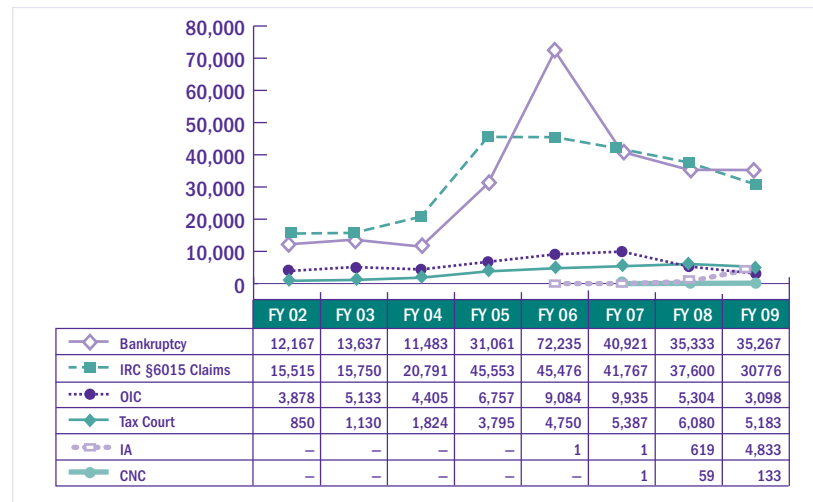
ANALYSIS OF PROBLEM

Background

The Current IRS Inventory of Joint Filers' Separate Accounts Is Substantial.

Since 2002, the number of joint filers' separate accounts, designated as MFT 31 accounts, has generally increased, with a spike in 2006 that coincided with a change in the bankruptcy law.⁵ Chart 1.19.1 shows the number of MFT 31 accounts by year of account creation and category.⁶

CHART 1.19.1, MFT 31 Accounts Established FY 2002-2009 by Triggering Event



⁴ See *IRS CADE Processing System Tops 15 Million Tax Returns*, IR-2008-39 (Mar. 12, 2008) available at <http://www.irs.gov/newsroom/article/0,,id=180038,00.html>. CADE is to be released in phases, with the next release scheduled for 2012. The 2012 release does not accommodate a processing change for MFT 31 accounts. The next release of CADE thereafter is scheduled for 2014. Response from CADE project office (Aug. 25, 2009).

⁵ The 2006 increase in IRS bankruptcy cases followed the 2005 surge of filings before the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23 (2005), took effect on Oct. 20, 2005.

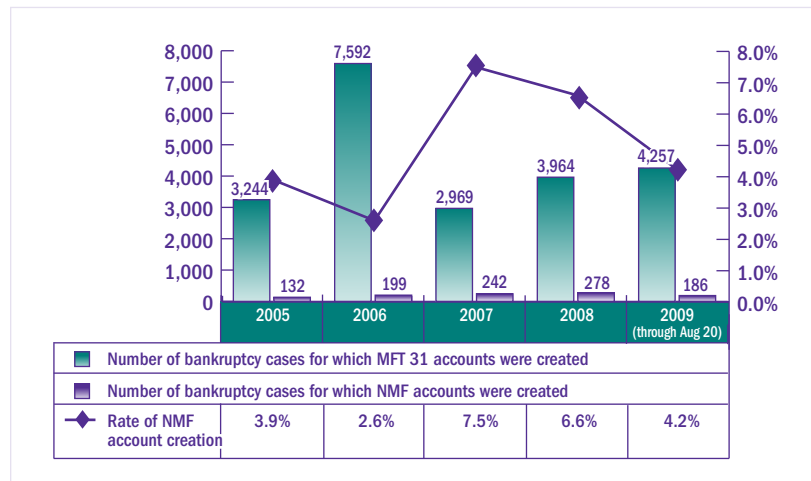
⁶ TAS Research analysis of MFT 31 accounts created during FY 2002 through FY 2009. Where the triggering event was a claim for innocent spouse relief, MFT 31 accounts were established for both spouses beginning in 2005; prior to 2005 only the account of the requesting spouse was established in MFT 31. These totals do not include non-master file (NMF) accounts, discussed *infra*. The bankruptcy category includes not only single petitions, but also joint petitions resulting in discharge of only one spouse. The Offer in Compromise (OIC) category includes not only approved separate offers but also defaults of accepted joint OICs by only one spouse. See Internal Revenue Manual (IRM) 21.6.8.3 (3) (Oct. 1, 2009).

The two most common triggers of MFT 31 account creation from 2002 through 2009 were bankruptcy and claims for relief under Internal Revenue Code (IRC) § 6015.

The Extent to Which Systemic Limitations Prevent the IRS from Creating MFT 31 Accounts Is Uncertain.

When systemic limitations prevent the IRS from creating MFT 31 accounts, the IRS creates non-master file (NMF) accounts.⁷ NMF accounts are not part of the main system of records, or master file, on which most taxpayer records are stored. Retrieving records from NMF requires special access and specialized knowledge of how the database operates, which means that some IRS employees who assist taxpayers cannot fully research taxpayer accounts, or may overlook the existence of an NMF account altogether.⁸ Chart 1.19.2 shows the number of bankruptcy cases which resulted in the creation of an MFT 31 or NMF account from 2005 to 2009:⁹

CHART 1.19.2, Number of Cases in Which MFT 31 and NMF Accounts Were Created in Response to Bankruptcy as a Triggering Event FY 2005-2009



The number of cases resulting in the creation of NMF accounts, as a percentage of the number of cases resulting in the creation of MFT 31 accounts in response to the same

⁷ Examples of conditions that prevent creation of MFT 31 accounts are: one of the joint filers has an invalid Taxpayer Identification Number (TIN); one of the joint filers has an Individual Taxpayer Identification Number (ITIN); there is a Criminal Investigation indicator on the joint account; or the joint account shows that more was paid than was due (i.e., a credit balance account). IRM 25.15.15.2.1 (July 17, 2009). See also IRM 25.15.7.7.1(7) (July 17, 2009).
⁸ For example, Taxpayer Advocate Management Information System (TAMIS) case file 4191741 details the inability of the IRS's Accounts Management function to process a TAS Operations Assistance Request to adjust errors on an NMF account.
⁹ IRS response to TAS information request (Aug. 21, 2009). The Wage and Investment (W&I) division was not able to report what proportion of the processable claims for relief under Internal Revenue Code (IRC) § 6015 resulted in MFT 31 accounts and what proportion of the claims resulted in NMF accounts. Nor could the Small Business/Self-Employed division (SB/SE) identify the number of MFT 31 accounts or NMF accounts that were created in response to the OIC trigger (until 2008, the third largest trigger for creation of MFT 31 accounts), or even the number of accepted OICs that applied to only one spouse. IRS responses to TAS information requests (July 23, 2009, Aug. 21, 2009).

bankruptcy trigger, ranged from 2.6 percent to 7.5 percent over the five-year period. This variability suggests that the IRS inconsistently creates separate accounts and thereby provides inconsistent taxpayer service.

The Extent to Which the IRS Fails to Create MFT 31 Accounts Even When Possible and Appropriate Is Uncertain.

The IRS reported processable claims for relief under IRC § 6015 as shown in Table 1.19.3. Given that an MFT 31 account is created for each spouse when a processable claim is submitted, then the anticipated number of MFT 31 accounts should be roughly double the number of processable claims.¹⁰

TABLE 1.19.3, Processable Claims for Relief Under IRC § 6015 Compared to Anticipated and Actual MFT 31 Accounts

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Processable Claims for Relief under IRC § 6015 ¹¹	29,485	27,930	25,522	25,349	30,612
Anticipated MFT 31 Accounts (<i>i.e.</i> , roughly double the number of processable claims)	58,970	55,860	51,044	50,698	61,224
MFT 31 Accounts Actually Created ¹²	45,553	45,476	41,767	37,600	30,776
Rate of Discrepancy Between Anticipated and Actual MFT 31 Accounts	22.8%	18.6%	18.2%	25.8%	49.7%

As Table 1.19.3 shows, the 2006 discrepancy rate of 18.6 percent more than doubled by 2009. The difference between the number of anticipated MFT 31 accounts triggered by the filing of a processable claim for relief under IRC § 6015 and the number of MFT 31 accounts actually created in response to that triggering event ranges from 9,000 to more than 30,000 annually.¹³ Even the assumption that some of the anticipated MFT 31 accounts resulted in NMF accounts, rather than MFT 31 accounts, does not explain the difference. The IRS does not track the number of processable IRC § 6015 claims that result in neither MFT 31 nor NMF accounts.¹⁴

Mismanagement of Joint Filers' Separate Accounts Results in Impermissible Collection Activity by the IRS as Well as Other Burdens to Taxpayers.

In a sample of 3,105 MFT 31 modules (tax accounts) that it examined, TAS estimated that approximately 1,100 modules (*i.e.*, 35 percent) had erroneous collection statute expiration dates (CSEDs) that arose when account data was incorrectly transferred from joint accounts

¹⁰ The number of anticipated MFT 31 accounts should be double the number of processable claims, reduced to the extent systemic limitations prevent the IRS from creating them.

¹¹ IRS responses to TAS information requests (July 23, 2009 and Oct. 13, 2009).

¹² TAS Research (Oct. 13, 2009).

¹³ In FY 2007, the difference was 9,277; in FY 2009, the difference was 30,448.

¹⁴ IRS responses to TAS information request (July 23, 2009).

to MFT 31 accounts.¹⁵ The IRS collected tax when the CSED had expired.¹⁶ W&I agreed to correct the procedure that led to this specific error and to refund overpayments as appropriate, but the period of limitations on refunds had already expired in 856 of the 3,105 modules in the TAS sample.¹⁷ Even where specific “fixes” are forthcoming (but not necessarily available to all injured taxpayers), this example demonstrates the lack of systematic IRS reviews or measures that would have identified the problem, provided relief to all affected taxpayers, and resulted in additional measures to prevent the problem from recurring.

A review of cases on the Taxpayer Advocate Management Information System (TAMIS) shows a variety of other errors in the management of MFT 31 accounts. These errors tend to arise because MFT 31 accounts require more processing than others, including more frequent manual intervention. For example, when an MFT 31 account is created, the IRS must “zero out” the joint account (*i.e.*, reduce it to zero) and transfer any balance due to the MFT 31 account.¹⁸ In a sample of 17 modules involving joint accounts or MFT 31 accounts, this first step had been omitted in four modules, and the consequences were:

- Taxpayers with MFT 31 accounts continued to receive collection letters with respect to the balance shown on the joint account, which should have shown a zero balance.
- In one of these four modules, the taxpayer’s Economic Stimulus Payment was offset to pay the balance due erroneously shown on the joint account.
- In two of the four modules, the inappropriate collection activity culminated in levies.¹⁹

Other examples of MFT 31 account mismanagement are:

- An IRS telephone assistor may not realize that a separate MFT 31 account (with a balance due) exists or should be created. The assistor reviews the zeroed out joint account and may erroneously inform taxpayers or practitioners that no tax is owed.²⁰
- A lapse of time between the zeroing out of the joint account and the creation of the MFT 31 account may cause the IRS to release a tax lien associated with the joint account because it has a zero balance, rather than transferring the lien to the MFT 31 account. The taxpayer is confused as to the existence of the liability and the IRS foregoes legitimate collection activity.²¹

¹⁵ Systemic Advocacy Management System (SAMS) Project 11034 (formerly 0029060). The same or related problem had been reported by SAMS issues I0000907, I0003709, I0004152, I0025792, I0026425, I0026596, I0026682, and I0027119, beginning as early as 2003. See also Most Serious Problem: *IRS Policies and Procedures for Collection Statute Expiration Dates Adversely Affect Taxpayers*, *supra*.

¹⁶ Joint W&I/TAS study that resulted from SAMS Project 11034.

¹⁷ IRS corrective procedures include issuing employee information alerts as appropriate, writing a training guide, and providing training. Nevertheless, data transfer problems continue to arise. For example, a “restricted interest” condition in which the interest computation is affected by a particular statutory provision (see IRM 20.2.8-1 (July 31, 2001)) may not be properly recorded in the MFT 31 account. See SAMS issue 15532 (June 29, 2009).

¹⁸ IRM 21.6.8.5.1 (6) (Oct. 1, 2008).

¹⁹ TAS review of TAMIS cases (Sept. 14, 2009).

²⁰ See TAMIS case files 4392156 and 4036152.

²¹ SAMS Issue 15979 (Aug. 26, 2009). The MFT 31 account in this case was created because one of the joint filers entered into an installment agreement. As discussed *infra*, the IRS recently added this event as one that triggers creation of MFT 31 accounts.

- The IRS may improperly credit the taxpayer's electronic payments to the joint account rather than apply them to the MFT 31. The taxpayer receives collection notices with respect to the MFT 31 account for which payment was submitted.²² Similarly, the IRS may apply installment payments intended for an MFT 31 account to the joint account that has a zero balance, which results in a refund. Not only must the taxpayer return the refund checks issued with respect to the joint account, but he or she also encounters the risk that the installment agreement associated with the MFT 31 account will be treated inappropriately by the IRS as in default.²³
- The IRS may apply the same payments or credits to the joint filers' separate accounts at different times, leading to differences in the amounts of interest and penalties computed with respect to each filer, an error that requires manual adjustment.²⁴

A subsidiary problem that arises with respect to MFT 31 accounts concerns the relationship between the IRS's taxpayer account database and the Centralized Authorization File (CAF) database on which taxpayers' powers of attorney (POAs) are stored. When the CAF unit receives a POA, it must associate (or "load") the POA with the primary taxpayer's MFT 31 account (*i.e.*, with the account of the first taxpayer listed on the joint return). As a consequence, the IRS sends communications requested by the secondary taxpayer's POA to the primary taxpayer's POA. These communications may include the secondary taxpayer's financial information, name change, address, or telephone number, information that is not to be disclosed.²⁵ Inappropriate disclosures in the context of MFT 31 accounts are especially troubling because a spouse who has suffered domestic abuse may be placed at greater risk if her personal information is improperly disclosed to the abusive spouse. TAS brought this problem to the attention of the IRS, which agreed to allow the CAF unit to associate a POA with only a secondary taxpayer's account.²⁶ The scheduled operational date for this correction is January 1, 2010.

Expanded Use of MFT 31 Accounts May Increase Taxpayer Burden.

The IRS recently developed a pilot program to use MFT 31 procedures when one joint filer enters into an installment agreement with the IRS, an arrangement that otherwise requires manual monitoring.²⁷ The pilot project is expected to result in the creation of 14,560

²² SAMS Project P0028871.

²³ SAMS Issue 15916 (Aug. 19, 2009). The IRS erroneously refunded payments despite the provision in IRM 21.6.8.7 (6) (Nov. 13, 2008) that payments which are misapplied to a joint account should be offset to the MFT 31 account, rather than refunded.

²⁴ TAS review of TAMIS cases (Sept. 14, 2009).

²⁵ IRM 21.6.8.2(2) (Oct. 1, 2008).

²⁶ IRS response to TAS information request (Aug. 24, 2009); W&I Policies, Procedures & Guidance work request reference no. SCA0808220TH, *Centralized Authorization File/Masterfile Primary and Secondary Taxpayers*. Problem addressed in SAMS Project 28109. See also Most Serious Problem: *IRS Power of Attorney Procedures Often Adversely Affect the Representation Many Taxpayers Need*, *supra*.

²⁷ MFT 31 Mirror Assessment SB/SE and W&I Pilot provided in IRS response to TAS information request (Aug. 21, 2009). Cases in which one joint filer is in currently not collectible status, although identified as problematic, were not included in the pilot program.

additional MFT 31 accounts annually.²⁸ While the National Taxpayer Advocate applauds the IRS for recognizing the benefits of using MFT 31 procedures rather than manually monitoring accounts, she is concerned that more taxpayers will be burdened if the already under-monitored MFT 31 process is expanded.

Systemic Fixes are Needed Independently of CADE.

The 2012 scheduled release of the CADE processing system will not correct any of the MFT 31 account management problems.²⁹ Not until 2014, at the earliest, will the CADE system begin to address these concerns. Taxpayers affected by the mismanagement of their separate accounts need immediate relief.

CONCLUSION

In conclusion, the National Taxpayer Advocate offers these preliminary recommendations:

1. The IRS should systemically monitor accounts in which the triggering events for creating MFT 31 accounts are present to ensure that MFT 31 accounts are created when appropriate. The IRS should develop management reports to identify instances in which MFT 31 accounts were not created in response to a triggering event. Employees within specialized MFT 31 units in all functions in which triggering events occur should address these failures, and the IRS should revise and cross-reference the relevant portions of the IRM and direct employees to refer such instances to that specialized unit for corrective actions.
2. Once it creates MFT 31 accounts, the IRS should systematically monitor them and verify that they accurately reflect payments, do not lead to inappropriate collection activity, and do not result in inappropriate IRS communications with respect to separate accounts. This might be accomplished by each operating division examining a sample of the MFT 31 accounts in its inventory to determine whether the accounts have been properly managed, and then correct any errors identified.
3. The IRS should systemically monitor NMF accounts that it creates when MFT 31 accounts cannot be created to verify that they accurately reflect payments and do not lead to inappropriate collection activity. This might be accomplished by revising the IRM to instruct employees to refer joint accounts for which separate NMF accounts were created to the specialized units described above.
4. The IRS should program the 2014 release of CADE to prevent mismanagement of MFT 31 accounts and identify instances of systemic failure with respect to MFT 31 accounts. The IRS should also explore whether to accelerate MFT 31 account management issues to the 2012 release of CADE.

²⁸ Approximately 140 installment agreements meet the pilot criteria each week, and each installment agreement results in the creation of two MFT 31 accounts (one for each joint filer). As discussed *supra* note 21, creating MFT 31 accounts in response to the installment agreement trigger has already resulted in mismanagement of taxpayers' accounts.

²⁹ IRS responses to TAS information requests (July 23, 2009).

IRS COMMENTS

The IRS maintains records of individual taxpayers' accounts on the Individual Master File (IMF). Each module on the IMF represents a specific tax return of a specific taxpayer for a specific tax period. IMF modules are further classified by type of return, known as the MFT Code. The IRS uses MFT Code 30 for Form 1040 returns.

The IRS also identifies and controls IMF tax modules by Taxpayer Identification Number (TIN), which generally is the taxpayer's Social Security number (SSN). When a married couple elects to file a joint return, the first SSN on the Form 1040 (or primary SSN) is used by the IRS to identify, control, research, or adjust the joint account. The IMF currently contains hundreds of millions of tax modules. So far during 2009 alone, over 143 million tax returns/modules have been added to the IMF.³⁰ During 2008, the IRS processed approximately 154.7 million individual returns, of which 56 million (or about 36 percent) were for joint filers.³¹

In the vast majority of situations involving joint filers, any subsequent credits, payments, or other adjustments are posted and maintained on their joint tax modules. However, in certain limited situations, provisions in the law make it possible to sever liability, in which case the IRS must separate a joint account and treat each taxpayer separately. These situations generally arise when only one spouse requests tax relief or the consequences of an IRS action differ for each spouse. The latter includes joint filers becoming subject to different periods of limitation on assessment or collection or when IRS collection actions are prohibited against one joint filer but not the other.

While the National Taxpayer Advocate suggests that the number of joint filer separate accounts is substantial, these situations actually affect approximately 43,500 joint accounts annually³² (or roughly 0.08 percent of all joint filers) and are limited to situations involving:

- Bankruptcy — either spouse is discharged or dismissed from bankruptcy;
- Offer in compromise — either spouse makes an offer on a liability;
- Tax Court — either spouse petitions the tax court;
- One spouse agrees to a tax deficiency adjustment;
- Innocent Spouse claim — an assessment is made against a joint module but one spouse is fully or partially relieved of the liability;
- Taxpayer Assistance Order — either spouse files Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*; or
- Installment agreement — either spouse requests an installment agreement.

³⁰ IIRAPHQ Cumulative Individual Income Tax Return report for week ending Nov. 13, 2009.

³¹ Compliance Data Warehouse, Individual Returns Transaction File, IRTF_F1040 table

³² See National Taxpayer Advocate report *supra*: "The IRS creates, on average, more than 87,000 accounts each year when it separates accounts of married taxpayers who file joint returns."

Prior to 2001, in these situations, the IRS removed the joint tax module from the IMF and established two separate tax modules on the Non-Master File. However, there are limitations associated with the taxpayer account data in the NMF. Adjustments, such as payments or refunds, must be made manually and require considerably more time to process. Penalties and interest also must be manually computed and there is no automated cross-reference between the NMF and the IMF.

Beginning in January 2001, the IRS moved the process of separating joint accounts from the NMF to the IMF using a new MFT Code 31. The movement of these former NMF accounts to MFT 31 on the IMF benefits taxpayers due to the availability of automated adjustments and other computations that eliminate human error, as well as the ability of the IRS to electronically cross-reference any other IMF tax modules related to the same taxpayers.

As acknowledged by the National Taxpayer Advocate in this report and previously in 2005, the IRS further improved the process of separating joint accounts on its computer systems during 2005.³³ This process is generally referred to as “mirroring.” When initiated by an employee, the mirroring process systemically establishes two MFT 31 accounts, one for each spouse’s SSN. Thereafter, credits and adjustments are systemically posted to each spouse’s account. For example, these systems changes enable the IRS to mirror accounts as soon as a processable Innocent Spouse request is filed, rather than after the relief request has been processed. This ensures that each new account is more timely populated with the appropriate collection statute expiration dates, adjustment actions, and other account data applicable to each spouse.

Notwithstanding the availability of the MFT 31 mirroring process, the IRS must still use the NMF to separate joint accounts in certain situations. This generally occurs when the secondary spouse has an invalid SSN, one spouse has an ITIN instead of an SSN, or there is a criminal investigation indicator on the joint account.

Creating and Managing MFT 31 Accounts

The IRS has taken the following actions to ensure the proper creation and management of separated accounts:

- Mirrored accounts systemically compute the Collection Statute Expiration Date (CSED) and Assessment Statute Expiration Date (ASED) for both spouses;
- An internal transcript generates anytime a payment should have been mirrored on an account but failed to do so; and
- MFT 31 computer programming has been updated so that offsets (reductions to credits to satisfy outstanding liabilities) will now systemically occur from a joint account (MFT 30) to the MFT 31 accounts for both the primary and secondary taxpayers on a joint return.

³³ National Taxpayer Advocate 2005 Annual Report to Congress 328.

As noted by the National Taxpayer Advocate in this report, the IRS recently joined with the Taxpayer Advocate Service to assess and correct the assignment of erroneous CSEDs on approximately 2,200 MFT 31 modules that occurred over a period of five years. This happened when errors were made by employees establishing these split assessments in connection with Innocent Spouse and Bankruptcy cases. The IRS trained a special team of employees to correct these errors, which included revising the CSED and crediting overpayments. Payments received after the corrected CSED occurred in less than half of the 1,200 cases reviewed to date. Other corrective actions include improved communications and training for IRS employees involved in MFT 31 account creation or adjustment processes. The IRS appreciated the National Taxpayer Advocate bringing this issue to our attention and the support and assistance provided in developing the necessary corrective actions.

The IRS has also requested an Integrated Automation Technologies (IAT) tool that can be used to check each TIN on a MFT 31 report to see if the mirroring process has been completed. If not, the tool will notate that the case should be manually corrected and processed as separate accounts. The tool is currently in development and is expected to be delivered in January 2010 for use in SB/SE Campus Compliance Services (CCS). The IRS will also consider the feasibility of expanding the use of similar IAT tools elsewhere, including in the Innocent Spouse program.

Non-Master File

As previously mentioned, if an account cannot be systemically established with a MFT 31, it must be manually established on the NMF. IRS makes every attempt to establish MFT 31 accounts on the IMF. Nevertheless, there are many conditions that prevent the systemic mirroring of accounts. Entity issues (invalid TIN, name/SSN mismatch, use of ITIN, etc.) are the number one problem. If an entity issue is present, the systemic mirroring process fails and a NMF account must be created. This situation routinely arises when the secondary taxpayer on the joint account has taken the surname of a spouse but failed to timely notify the Social Security Administration (SSA) of the name change. When the system attempts to post to the SSN, it will not due to the name control mismatch between IRS and SSA records. Until the name/SSN mismatch is corrected, the MFT 31 account cannot be established.

In this regard, the National Taxpayer Advocate reports that variability in the percentage of bankruptcy cases resulting in creation of NMF accounts versus MFT 31 accounts indicates that the IRS inconsistently creates separate accounts and provides inconsistent taxpayer service. We disagree. This variability is wholly dependent upon the circumstances of each case. A less than five percentage point variance (2.6 percent to 7.5 percent) over a five year period fails to support this conjecture. Moreover, although use of NMF involves increased manual processes, it does not prevent delivery of effective customer service.

When an account is created on the NMF, the computer automatically generates an indicator on the taxpayer's account. IRS employees are trained to research for and recognize these

indicators. For example, NMF notices are easily identifiable because they show the taxpayer's TIN followed by the letter "N". This indicator facilitates IRS processing when replies to these NMF notices are received. These notices also contain a tear-off stub for taxpayers to send to the IRS along with their payments. The tear-off stubs show all the information required for properly processing the payments to the correct NMF accounts. Additionally, a unique toll-free number appears on all NMF notices and the IRS already has dedicated units staffed and trained to handle these NMF calls. While the process for NMF accounts may vary from the MFT 31 processes, the IRS strives to provide the same quality and level of service for NMF accounts as we do for MFT 31 accounts.

"Discrepancy Rate" for Accounts Involving IRC § 6015 (Innocent Spouse) Claims

The National Taxpayer Advocate takes the annual number of processable Innocent Spouse claims and doubles them to arrive at a number of anticipated annual MFT 31 accounts. As previously described, there are many conditions that prevent creation of a MFT 31 mirrored account. Because of these conditions, one cannot simply double the number of claims to arrive at a meaningful number of anticipated mirrored accounts. The reported "rate of discrepancy" between the number of Innocent Spouse claims and anticipated MFT 31 accounts do not reflect the result of any analysis of actual cases to determine the reasons why MFT 31 accounts were not established. Such rudimentary analysis and speculative interpretation of results does not support the suggestion that the IRS routinely fails to properly create separate accounts when warranted.

Posting Separate Accounts

The IRS acknowledges that there are some delays involved in the creation and posting of mirrored accounts. However, in most cases, these delays are inherent in the MFT 31 mirroring process itself, which still requires the IRS to receive a taxpayer's request for relief and to initiate the necessary processing. For example, the IRS employees that process innocent spouse claims normally begin the joint account separation process within ten days from the receipt of the claim for relief. Because claims for relief can be mailed to any IRS office around the country, claims received in other offices can, on occasion, take that long to reach the Cincinnati Centralized Innocent Spouse Operation where these requests are processed. Additionally, depending on the particular facts and circumstances in each case, due to the batch processing architecture of the IRS Master Files, it can also take as long as two to four weeks for the separated accounts to post, depending on whether MFT 31 or NMF accounts are involved. As noted above, the feasibility of using an IAT tool for enhanced monitoring of MFT 31 account creation for Innocent Spouse claims is under consideration.

Centralized Authorization File

Contrary to what the National Taxpayer Advocate reports, the IRS currently has the capability to associate a Power of Attorney (POA) with the correct account of a secondary taxpayer's MFT 31 account. Under current procedures, a POA received for an MFT 31 account

is processed and associated solely with that MFT 31 account. There is no systemic opportunity for mailing notices or other confidential communications to the incorrect spouse or representative, since MFT 31 accounts are separate accounts and information about the other spouse is not included. In addition, the Transcript Delivery System, an automated system accessible to tax practitioners and other authorized third-parties that delivers tax account and return information, has specifically been programmed to prevent erroneous spousal disclosures in cases where a request involves an MFT 31 account.

It is possible that the scenario and reference to January 2010 programming described in the National Taxpayer Advocate's report actually involves un-separated MFT 30 joint accounts. Where only one spouse has designated a representative on a joint account or where a representative was jointly designated but the taxpayers actually filed separately (married filing separate returns), the potential existed for inadvertent unauthorized disclosures of account information to the wrong spouse or representative. However, the IRS has initiated programming changes and issued revised instructions for employees to address this issue. For a description of the new procedures and scheduled computer programming changes, see IRS comments in response to the *Most Serious Problem: IRS Power of Attorney Procedures Often Adversely Affect the Representation Many Taxpayers Need*, included elsewhere in this report.

Customer Account Data Engine

The Customer Account Data Engine is a multi-year project that represents the cornerstone of IRS's systems modernization efforts. During 2009 through November 13, CADE processed over 40.2 million returns and issued 35.1 million refunds totaling \$59 billion.³⁴

CADE will ultimately replace the IRS Master File for the processing and retention of all taxpayer accounts. The benefits of CADE include daily postings of account information, the ability to issue refunds much faster, and delivery of significantly enhanced customer services due to daily updating of taxpayer account information.

CADE is a multi-year project with rigorous governance, planning, functionality development, and release processes. The system does not currently support MFT 31-type separation of joint accounts. The 2012 CADE release will incorporate the mirroring of joint accounts. However, CADE will not include the capability of interacting with external compliance or other databases until its 2014 release. At that time, CADE will have the ability to support the same or similar systemic updates and account monitoring capabilities currently available through Master File. Accessing and managing mirrored accounts through CADE will provide enhanced customer services due to CADE's ability to post transactions or modify accounts daily. The IRS will liaison with the Taxpayer Advocate Service and other affected organizations to define additional MFT 31-related requirements beginning next year.

³⁴ IRS, *CADE Weekly Summary Report for Cycle 200946*.

Summary

In conclusion, the IRS strives to keep all taxpayer accounts correctly updated and to apply the extra effort needed when separating joint tax modules. Much of this process has been significantly improved over the last few years through additional automation. Special transaction codes alert employees to MFT 31/NMF issues and employee adherence to procedures is monitored by managers during case reviews. The IRS has systems or procedures planned or in place to monitor MFT 31 accounts to verify they have been properly created and that payments have been mirrored when appropriate. The IRS has dedicated staff trained and available to handle NMF-related customer contacts. CAF procedures ensure separated joint account information is disclosed only to authorized representatives. Finally, current plans for CADE include functionality to support the separation of joint accounts by 2012, with further enhancements and linkages to other systems possible for 2014.

Taxpayer Advocate Service Comments

The National Taxpayer Advocate acknowledges the IRS's willingness to address problems joint filers encounter when their separate accounts are mismanaged. Further, the National Taxpayer Advocate is pleased to learn that the IRS is developing a systemic tool that will identify some occasions in which MFT 31 accounts were not properly created. However, she remains concerned that the IRS does not appreciate the extent to which joint filers' separate accounts are mismanaged or the extent of the harm this causes taxpayers.

For example, the IRS, in its response, indicates that the number of joint filers whose accounts should be separated represents only a small portion of the total number of joint filers. If the IRS intends to convey that MFT 31 account mismanagement is not a serious problem for taxpayers, we would invite the IRS to consider the situation from the perspective of taxpayers who are caught up in this mismanagement event. To address MFT 31 account errors, taxpayers must attempt to deal with the intricacies of IRS account management procedures while simultaneously attempting to defend themselves against inappropriate collection activities. For many taxpayers, this scenario is a nightmare. In any event, whether the problem is expressed as one affecting 43,500 joint accounts or 87,000 separate accounts stemming from joint accounts, the frequency with which separated accounts are mismanaged is unacceptable. This is illustrated by the 35 percent erroneous CSED rate in the sample that TAS examined and referred to the IRS. Though estimates of the actual number of accounts differ, the IRS acknowledges that in a significant number of cases it collected tax after the CSED had expired, in violation of the law.

Also of concern is that errors in managing separate accounts are often due to systemic conditions, so that a single malfunction affects many taxpayers, often taxpayers who are

simply attempting to pay their taxes. An example of this is the need to process payments and refunds by using NMF accounts, which the IRS notes “require considerably more time to process” (while simultaneously maintaining that use of NMF “does not prevent delivery of effective customer service”). Whenever the IRS uses NMF accounts, taxpayers will experience delays in resolving their tax issues because not all IRS employees have access to and know how to use the NMF. The variability in the rate at which the IRS creates NMF accounts in response to the same bankruptcy trigger is statistically significant, and the IRS should investigate its cause.

Regarding the problem of IRS communications with taxpayers, the National Taxpayer Advocate agrees that the IRS can associate a POA with a secondary taxpayer’s MFT 31 account, and the IRS is correct to point out that a POA received for an MFT 31 account is processed and associated solely with that MFT 31 account. The programming planned for January 2010 is intended to correct the problem of inappropriate disclosure that arises when the spouse who is the secondary taxpayer files a separate power of attorney for the joint account. The National Taxpayer Advocate is pleased that the IRS has initiated the programming changes and has issued revised instructions for employees to address this issue.

The National Taxpayer Advocate’s most serious concern, however, is that the IRS does not maintain data on MFT 31 and NMF account inventories, and thus cannot sufficiently monitor either type of account to avert or correct errors. The IRS acknowledges that it maintains the great majority of separate accounts using MFT 31, rather than in NMF (NMF accounts were used, at the most, only 7.5 percent of the time in response to the bankruptcy trigger, for example). However, with respect to the innocent spouse trigger, it attributes an 18 percent to 50 percent discrepancy between the number of MFT 31 accounts that it actually creates and the number of MFT 31 accounts that should have been created to the supposition that NMF accounts were set up instead. TAS’s premise that the number of MFT 31 accounts created in response to a given trigger should be roughly double the number of joint accounts (with NMF accounts created for a small minority) is logical by comparison. If TAS’s premise is erroneous, the IRS should be able to produce accurate data to establish the correct levels of MFT 31 and NMF inventories, and explain the wide variation in the rate at which it establishes MFT 31 accounts in response to the same trigger. Establishing the dimension of these populations will allow the IRS to monitor them more effectively.

The National Taxpayer Advocate is pleased that the IRS is developing systemic tools for some of its functions, providing training, and designating special transaction codes to identify NMF accounts. We hope the IRS will continue to develop the IAT tool or others that will automatically generate management reports when the IRS does not create the appropriate account in response to a triggering event. The National Taxpayer Advocate thanks the IRS for its willingness to work with TAS to define MFT 31-related issues in the 2014 CADE release, and we look forward to collaborating with the IRS in the coming years. In the meantime, however, the IRS will continue to create at least 87,000 separate accounts

each year. The IRS can do more to help taxpayers who are affected by mismanagement of their separate accounts in the coming four to five years.

Recommendations

The National Taxpayer Advocate recommends that the IRS take the following specific actions to avoid mismanagement of joint filers' separate accounts:

1. The IRS should implement a system in all IRS programs with responsibility for creating MFT 31 accounts to ascertain whether it creates MFT 31 accounts or, if necessary, NMF accounts, in response to a triggering event.
2. The IRS should monitor MFT 31 accounts and NMF accounts to verify that they accurately reflect payments, do not lead to inappropriate collection activity, and do not result in inappropriate IRS communications.
3. The IRS should develop management reports that identify instances in which it did not create MFT 31 accounts or NMF accounts in response to a triggering event or mismanaged these accounts, and describe the corrective action it took.