Testimony

of

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before the

IRS Oversight Board

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Chairman Wagner, Members of the Board, and other distinguished guests, my name is Colleen Kelley and I am the National President of the National Treasury Employees Union (NTEU). As you know, NTEU represents l50,000 federal employees in 30 federal agencies and departments, including the men and women who work at the Internal Revenue Service. I appreciate you giving me the opportunity today to present recommendations with regard to the tax gap and methods to increase taxpayer compliance.

Budget

NTEU fully supported the Board's recommendation of a 10% increase over FY '04 and is disappointed with Congress' appropriation of only $10.233 billion for fiscal year (FY) 2005, as passed under the Omnibus Appropriations bill. This amount represents $441 million below the President's IRS request for FY '05 and a meager half percent increase from the FY '04 funding level. In terms of real dollars, Congress' appropriation will leave the IRS at a FY '05 funding level far below that of FY '04. Congress did not take into account the 3.5% pay increase for federal employees or increases in inflation, rent and other expenses. The IRS simply cannot be expected to fulfill its mission under these extremely tight budget constraints. Congress' funding level makes absolutely no business sense when it is taken into consideration that the IRS brings in at least four dollars for every one dollar spent. The IRS is an agency that generates revenue for the federal government and taxpayers can expect a healthy return on their investment in the IRS workforce. Congress must reassess their priorities in FY '06 and provide the IRS with a budget than enables them to generate the revenue needed to run the government and close the $300 billion tax gap.

NTEU would strongly support a 10% increase in IRS funding for FY '06 and urges the Board to again push for a similar increase. I would also encourage the Board and lawmakers to scrutinize Treasury's dubious cost-saving measures for FY '06 and set a budget that is commensurate with the changes in tax law and increasing complexity in tax administration.

Private Tax Collection

NTEU continues to oppose the Administration's plan to privatize tax collection, as authorized by H.R. 4520, American Jobs Creation Act of 2004. Under the congressional approval the IRS won last year, it would be permitted to hire private sector debt collectors and pay them a bounty of up to 25 percent of the money they collect. Let me be clear: NTEU opposes this short-sighted proposal and anticipates its complete failure as witnessed in a similar 1996 pilot program.

This proposal would risk exposing up to 2.6 million taxpayers' private information, would subject taxpayers to the abusive tactics of private debt collectors, and would cost U.S. citizens much more money than if IRS employees did the job.

Let me point to the mistakes of the 1996 IRS privatization pilot program, as well as to recent evidence that leads me to believe that another attempt at privatizing tax collection will lead to nothing but disastrous results.

Two pilot projects were authorized by Congress to test private collection of tax debt for 1996 and 1997. The 1996 pilot was so unsuccessful that the 1997 project was cancelled. Contractors violated the Fair Debt Collection Practices Act (FDCPA) and did not protect the security of sensitive taxpayer information. In addition, an IRS Internal Audit Report (Ref. No. 080805, 12/19/97) found that contractors made hundreds of calls to taxpayers before 8 a.m. or after 9 p.m., and that calls were even placed as early as 4:19 a.m. The contractors did not bring in anywhere near the dollars they projected, and millions were spent by the IRS to train the contractors instead of doing the IRS jobs they were paid to do.

Allowing private collection agencies to collect tax debt on a commission basis flies in the face of the tenets of the IRS Restructuring and Reform Act of 1998 (RRA 98). Section 1204 of RRA 98 specifically prevents employees or supervisors at the IRS from being evaluated on the amount of collections they bring in. Paying a contractor out of its tax collection proceeds clearly encourages overly aggressive tax collection techniques—the exact dynamic RRA 98 sought to avoid. Furthermore, the debt collection industry already has a long record of abuse. In 2003 the Federal Trade Commission received 34,543 (a 37% increase over 2002) consumer complaints about debt collection agencies, giving debt collectors the shameful title of the FTC's most complained about industry. Complaints include calling borrowers at all hours of the day and night; calling borrowers at work; using obscene or abusive language; threatening jail time or other actions the collector can't legally take; and revealing the alleged debt to third parties.

The IRS has said that it has learned from the 1996 project and is better equipped to address the problems raised. However, a revealing report by the Treasury Inspector General for Tax Administration (TIGTA Audit #200320010) provides evidence to the contrary. It shows how IRS contractors, revamping IRS computers, put taxpayers' data at risk.

The objective of the TIGTA audit was "to determine whether the Internal Revenue Service (IRS) has adequately protected Federal Government equipment and data from misuse by contractors." The review found: "The involvement of non-IRS employees in critical IRS functions increases the risk of misuse or unauthorized disclosure of taxpayer data, and could lead to loss of equipment or sensitive taxpayer data through theft or sabotage." The TIGTA audit found that the "lack of oversight of contractors resulted in serious security vulnerabilities." The report, found that, "contractors blatantly circumvented IRS policies and procedures even when security personnel identified inappropriate practices."

Clearly, the IRS does not have sufficient oversight of the current contractors it employs. Congress has not given the IRS a budget that provides additional resources to bolster oversight so the IRS certainly won't have the resources for additional oversight when it transitions to contracting out debt collection. Combine these factors with giving the contractors a 25% bounty incentive and you have a recipe for disaster, resulting in overly aggressive and abusive tactics on the part of the private debt collectors.

While the IRS is currently liable for damages caused by an IRS employee's misuse of sensitive taxpayer information, taxpayers would not have proper redress with the federal government for misuse of their confidential information by contractors. Instead, taxpayers would be left to seek damages against the private collection agency while the reputation of the IRS and the federal government is tarnished. It is plain and simple. This plan to privatize tax collection at the IRS will hurt U.S. taxpayers and will hurt IRS workers.

The IRS also claims that it has a plan in place to identify the most appropriate collection cases to be referred to the private debt collection agencies. While the IRS may have a plan, they are far from developing the technology that will provide this type of selection. When and if the IRS does complete development of this type of technological infrastructure, there will be a need for extensive IRS training. Once again, if Congress doesn't provide the necessary funding for additional IRS resources, the IRS can expect to find itself in the same predicament as they did in 1996.

For additional pitfalls, one needs only to look to the states' private tax collection efforts. Last year, a television station in Columbus, Ohio discovered an unlocked dumpster full of unshredded documents containing private debtors' financial information outside of a collection agency that was contracted to collect student loan and state tax debt. California has referred more than $2 billion in delinquent tax debt to private contractors over the past 17 years with a recovery rate of less than 3%. However, this 3% doesn't include the unaccounted for additional staffing costs to support California's private collection program in the first place.

IRS employees are – by far – the most reliable, cost-effective means for collecting federal income taxes. IRS employees can collect outstanding debt more cheaply than private contractors. With an appropriation of $296 million for compliance, the IRS could collect an additional $9.47 billion in revenue per year. That's a $31 return per dollar spent, compared to only $3 revenue per dollar spent for private collection agencies.

Having cited these failed attempts for private tax collection, I would recommend the IRS immediately halt its plans to privatize tax collection. Under the current conditions of rampant identity theft and deteriorating privacy here in the U.S., the federal government ought to be strengthening and protecting taxpayer privacy where it can. The IRS does not have the ability to oversee the work of contractors, and it cannot ensure that private taxpayer information—such as Social Security numbers—will be kept safe and secure. The risks of paying contractors commissions to collect taxes are enormous. Instead of rushing to privatize tax collection functions and putting taxpayer information in the hands of private collectors, the IRS should increase compliance staffing levels at the IRS, so that the compliance gap can be closed without compromising taxpayer rights.

The Washington Post adopted this position in a recent editorial, titled, "Why Can't the IRS Do It?" The editorial made several excellent points, including the following: "Just a few years ago, Congress was in a tizzy about abusive IRS tactics. Do lawmakers think that private debt collectors are a safer bet? In response to complaints about IRS bullying, Congress prohibited the IRS from evaluating employees on the basis of the amounts they recover. If that was deemed to produce bad incentives in government workers, wouldn't it be even more dangerous to pay commissions to private debt collectors, whose jobs may depend on their ability

to produce?"

RIFs

I commend Congress for acknowledging the IRS' haphazard approach to reorganizing the agency and asking for a report (Senate Rpt.108-342 - TRANSPORTATION, TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS BILL, 2005) regarding the reorganizations affecting nearly 5,000 employees and subsequent new hires. Congress also included language in its report directing the IRS to use "all available tools to minimize involuntary separations." This includes providing preferences to those employees targeted by a RIF for other vacancies for which they are qualified within the IRS, the Treasury Department or any other federal agency; a 90-day hiring freeze after a RIF announcement to allow targeted employees to apply for an appropriate position; bump-and-retreat rights with broadly-defined competitive areas; training or retraining; active agency involvement in seeking authorization for early-out and buyout programs; and the maximum of six months allowable of Career Transition Assistance Program benefits.

Despite the Committee Report language, the IRS is moving forward with its planned RIFs in several different areas. Generally speaking, NTEU believes that the IRS would benefit both in terms of cost savings and human resource satisfaction by placing a greater emphasis on retraining current employees for other positions within the IRS. Unfortunately, this has not been the approach taken by the IRS with regard to last year's RIFs.

The IRS is using the excuse of bolstering compliance to justify a reduction in force (RIF) of IRS Case Processing and Insolvency support employees in locations across the country—only to turn around and hire new employees to do the same work in four consolidated IRS Service Center sites. NTEU opposes the RIF and urges the IRS to keep its employees in the field, serving the local taxpayers.

Presumably, IRS intends to save money and increase efficiency with this move, but there is no evidence of cost savings and IRS' business case assumptions are faulty. IRS has failed to provide information on the cost of hiring and training new employees when the current employees already know how to do the job.

In responding to the announcement of the RIFs, former IRS commissioner Donald Alexander was quoted as saying, "Centralization is not always more efficient, especially when it moves support people away from those they are supporting."

As one of the rationales for the current centralization, the IRS indicates that Case Processing had not been reorganized since the 1970's. However, several attempts have been made to centralize Case Processing over the years, but have failed and this function has remained in the field. In fact, Case Processing functions were located in Service Centers until the IRS reorganized 25 years ago to locate these functions closer to the employees who perform collection and exam work. Reorganizing for the sake of reorganization is a waste of time and money, neither of which the IRS can afford to squander.

Case processing support employees assist Revenue Agents and Revenue Officers in resolving issues related to overdue taxes. One of the more important duties performed includes releasing liens on property once overdue taxes are paid so that a taxpayer can secure a loan and calculate interest penalty abatements.

Insolvency employees are responsible for monitoring tax compliance throughout the life of the bankruptcy, including trust fund taxes and pyramiding of business taxes. Insolvency employees must adhere to strict deadlines in order to avoid violations of the automatic stay and possible sanctions. Failure to take timely and appropriate actions could result in the IRS being sued for damages and/or attorney fees. Centralizing Insolvency work means that the new employees will need to know the local rules and standing orders of the various bankruptcy courts that take precedence under the Bankruptcy Code. It is unreasonable to expect employees to be able to follow the rules of dozens of different states and courts, likely resulting in delays and errors and a greater cost to the IRS.

Federal-State disclosure agreements—and the statutes that govern these agreements—differ by state. Centralizing the Insolvency work will mean that employees in the centralized sites will need to be responsible for knowing and adhering to all 50 variations. It will take longer for cases to close if they have to be shipped to a centralized site and this could hurt the taxpayer who is waiting for her case to be closed.

Currently, if a taxpayer has a question about the process, she can find one of the Case Processing employees locally and get her question answered. If these jobs are shipped out of state, it will be much more difficult for the taxpayer to get her question answered, or for the cases to be resolved in a timely and complete manner.

Finally, this removes accountability at the local level. If a member of Congress is contacted by a taxpayer constituent with an IRS case processing problem, that member will be directed to some out of state Service Center where the new employee has no comprehension of the region, much less the local personnel involved in closing a case, or the member of Congress making the inquiry.

NTEU agrees with the IRS that there is a great need to bolster enforcement efforts, but this RIF does not guarantee new or enhanced enforcement positions. Once again, this is a waste of time and money for the IRS. This is unfair to the current employees who are trained and successfully performing the Case Processing and Insolvency work; this is unfair to the taxpayers who rely on the services provided by their local Case Processing workers.

The IRS also has plans for a RIF of approximately 2,200 employees at the Memphis Submission Processing Center. NTEU strongly disagrees with the IRS's decision to conduct this RIF. The IRS claims that it is taking this action because there has been an increase in electronic filing of tax returns, and it no longer needs employees to process paper returns. However, according to the General Accounting Office (GAO-02-205), the IRS has fallen far short of meeting its electronic filing goals. IRS is using unrealistic, optimistic assumptions to project the increase in electronic tax return filing and then using these assumptions to justify the RIF.

I commend the House of Representatives Appropriators who recognize the risks of reducing IRS staffing of manual submission processing. In House Committee Report 108-243, they have asked IRS to report back prior to *"initiating any premature and ill considered reductions in force…"* (see House-Rept. 108-243, IRS MANUAL SUBMISSIONS PROCESSING).

NTEU recognizes that electronic filing will eventually become a reality of IRS' modernization efforts. But we strongly believe that any resulting reorganizations should occur when there is a genuine need for a shift to an e-filing workforce and every effort should be made to avoid a RIF by retraining and placement of current employees.

Outsourcing

The Administration's emphasis on privatizing federal work throughout the federal government, without fair competition and adequate oversight is reducing the effectiveness of the IRS. I believe I have recounted to the Board the problem of over a billion dollars worth of tax payments lost or destroyed by Mellon Bank, which held an IRS contract to receive and deposit taxpayers' checks. I have also referred in this testimony to a TIGTA report finding that technology contractors had not followed IRS rules on protecting confidential information. I urge the Board to look into contracting practices at the IRS to ensure that policies are put in place that require fair public-private competitions and rigorous oversight.

Modernization of IRS Workforce

Clearly, it is critical for the IRS to recruit and retain competent and committed employees. Competitive pay and benefits are very important in achieving this goal. Training must be effective and continually available. It is also important for employees to feel their work is valued. One example of sending employees a negative message that has led to a loss of morale and a loss of productivity is Section 1203 of the IRS Restructuring and Reform Act of 1998. More commonly known as the "10 Deadly Sins," Section 1203 outlines infractions for which IRS employees must be fired. Without question, Section 1203 impedes the ability of the IRS to perform its mission. According to GAO survey results (GAO-03-394), IRS employees fear the threat of being fired under Section 1203. This in turn has had a chilling effect on the ability of IRS employees to do their jobs. Employees specifically attribute the decrease in recommending a seizure of taxpayer's assets to Section 1203. Clearly, Section 1203 impedes IRS' enforcement mission and is unfair to the IRS employees who must work under the constant threat of losing their jobs.

NTEU is appreciative of the efforts of the IRS Oversight Board in supporting changes to Section 1203 and we hope we can count on your continued support.

It is indisputable that the IRS workforce is getting mixed signals regarding its value to the mission of the Service and the level of workforce investment the Service is willing to make. Without a doubt, the frontline employees are committed to working with management to increase efficiency and customer satisfaction. NTEU is committed to striking a balance between taxpayer

satisfaction, business results and employee satisfaction. I invite IRS management to join us in this endeavor.

I thank you for holding this important hearing today. NTEU supports and is interested in assisting you in your mission to invest in the IRS workforce.